Calendar No. 128

100TH CONGRESS *1st Session*	SENATE	REPORT 100-58

SENATORIAL ELECTION CAMPAIGN ACT OF 1987

REPORT

OF THE

COMMITTEE ON RULES AND ADMINISTRATION

Together With

MINORITY AND ADDITIONAL VIEWS

TO ACCOMPANY

S. 2

TO AMEND THE FEDERAL ELECTION CAMPAIGN ACT OF 1971 TO PROVIDE FOR A VOLUNTARY SYSTEM OF SPENDING LIMITS AND PARTIAL PUBLIC FINANCING OF SENATE GENERAL ELECTION CAMPAIGNS, TO LIMIT CONTRIBUTIONS BY MULTICANDIDATE POLITICAL COMMITTEES, AND FOR OTHER PURPOSES

MAY 14 (legislative day, MAY 13), 1987.—Ordered to be printed

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REPORT
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SENATORIAL ELECTION CAMPAIGN ACT OF 1987

MAY 14 (legislative day, MAY 13), 1987.—Ordered to be printed

Mr. FORD, from the Committee on Rules and Administration, submitted the following

REPORT

together with

MINORITY AND ADDITIONAL VIEWS

[To accompany S. 2]

The Committee on Rules and Administration, to which was referred the bill (S. 2) to amend the Federal Election Campaign Act of 1971 to provide for a voluntary system of spending limits and partial public financing of Senate general election campaigns, to limit contributions by multicandidate political committees, and for other purposes, having considered the same, reports favorably thereon with an amendment in the nature of a substitute, and recommends that the bill as amended do pass.

PURPOSE OF THE BILL

The purpose of S. 2, as reported, is to amend the Federal Election Campaign Act of 1971 to provide for a voluntary system of spending limits and partial public financing of Senate general elections, to limit contributions by multicandidate political committees and separate segregated funds to candidates and party committees, to extend and improve reporting and disclosure requirements, and to improve other provisions of that Act, as amended in 1974, 1976 and 1979.

PUBLIC FINANCING OF SENATE ELECTIONS

S. 2 would establish a voluntary system of spending limits tied to partial public financing for candidates to the United States Senate

in general elections, beginning in the first general election after one year following the enactment of the bill. The bill establishes a number of conditions to which a candidate must agree as a condition of eligibility for public financing.

To be eligible for public funds a candidate must have received contributions from individuals in an amount based on the population of the State from which the candidate seeks office. The qualifying threshold of contributions would range from $150,000 in the less populated States to $650,000 in the States with highest populations based on the formula of 10 cents multiplied by the voting age population of the State.

All candidates who wish to receive public funds must agree to limit expenditures in the general election campaign to $400,000, plus 30 cents times the voting age population of the State up to four million population, plus 25 cents times the voting age population in excess of four million, but in no case less than $950,000, nor more than $5.5 million. Participating candidates would also be limited in expenditures of their personal funds to $20,000; in expenditures in a primary election to the lesser of $2,750,000 or 67% of the State's general election spending limit; and in expenditures in a runoff election to 20 percent of the general election spending limit.

A participating candidate who is the nominee of a major political party will be entitled to receive for the general election a grant of public money equal to the difference between the qualifying threshold and the expenditure limit for the State. All other participating candidates will be entitled to receive payments equal to the amount of contributions received that meet conditions similar to those that apply to the qualifying threshold, up to an amount equal to 50 percent of the difference between the qualifying threshold and the general election expenditure limit for the State. In either case the total amount of public and private funding received by a candidate may not exceed the expenditure limit for the general election, unless specifically permitted in certain specified instances.

The Supreme Court, in *Buckley* v. *Valeo,* 424 U.S. 1, 57 (n. 65), 85-86 (1976), has upheld as constitutional voluntary expenditure limitations on campaign spending by candidates who receive public funds. While those candidates who do not accept public funds may not be subject to such limitations, they are required by this bill to file certain reports. Upon the filing of a report by a non-participating candidate to the effect that he or she has exceeded the spending limit, a participating candidate would be free to spend up to twice the limit and would be entitled to additional public funds equal to the spending limit, if a major party candidate, or public funds up to an additional 50 percent of the limit on a matching basis, if not a major party candidate. When twice the spending limit has been exceeded by his or her opponent, a participating candidate would be free of any general election spending limitation.

In addition to the general election spending limit, a participating candidate would be required to certify that he or she has complied with the spending limitations set for the primary and runoff elections and agree to personally appear and be identifiable during at least 50 percent of the time in any televised advertisement in

which reference is made to his or her opponent, if the opponent also agrees to abide by the limits.

If independent expenditures in excess of $10,000 are made by an individual or group against a participating candidate or for his or her opponent, that candidate would be entitled during the general election period to additional public funds equal to the amount spent. If such aggregate spending occurs before the general election period, the applicable spending limit for that candidate would be increased by an amount equal to such spending. In addition to such funds in the event of independent expenditures, a participating candidate would also be entitled to the "lowest unit rate" for televised broadcast time, while nonparticipating candidates could no longer receive this current benefit during the general election period.

The funds for paying the public financing provided in this bill would be raised by doubling the amount of the present income tax checkoff to $2 per person and $4 for a joint return (26 U.S.C. Section 6096(a)). After setting aside sufficient funds for the presidential general elections, party conventions and presidential primaries, the Secretary of the Treasury would set aside the remaining amount for the Senate Fund, from which payments would be made to Senate candidates. There is no provision for an appropriation of funds to this account. The committee estimates the cost for funding the Senate elections in 1988 could range from $75 million (Congressional Budget Office estimate) to approximately $92.5 million (Federal Election Commission estimate), depending on the number of candidates who choose to accept public financing, the administrative costs to range from approximately $1 million to $1.4 million for the first two year cycle under this bill. The lower estimates assume that only 80 percent of the Senate candidates will participate, while the higher amounts are based on the assumption that all Senate candidates will participate. Neither anticipates that independent expenditures will be of sufficient amounts to require the payment of any public funds to candidates.

Senate public financing will be administered by the Federal Election Commission, which will have authority to certify the eligibility of candidates and the payment of funds. The Commission will be required to audit on a random basis 10 percent of all major party candidates and 10 percent of all other candidates who participate, and will be authorized to audit any candidate when there is reason to believe that a violation may have occurred. The Commission is authorized to order the repayment of funds in any case where excess funds are received by a candidate, where a candidate uses funds for other than general election campaign purposes or where a candidate exceeds the expenditure limits. Such repayments are to be deposited to the Senate Fund. Knowing and willful violations are punishable by fines ranging from $10,000 to $25,000 and/or imprisonment up to five years depending on the nature of the violation. The Commission is authorized to promulgate regulations and is required to submit post election reports to the Senate regarding the operation of the public funding program during each election. The Commission will, upon petition by a candidate, be authorized to permit a candidate to raise and spend amounts for compliance

purposes in excess of 10 percent of his or her general election spending limit.

POLITICAL COMMITTEE CONTRIBUTION LIMITS

Limits will be placed on the aggregate amount of contributions a candidate to Congress may receive from non-party multicandidate political committees and separate segregated funds. A candidate to the House of Representatives would be limited to $100,000 in a two year election cycle, subject to increases up to a total of $150,000 if both the general and primary elections are contested and the candidate also has a runoff election. A Senate candidate would be limited to an amount equal to 30 percent of the applicable primary spending limit and an additional 30 percent of the applicable runoff spending limit if there is a runoff election. These limits are subject to indexing keyed to an increase in an established price index.

Political party committees will also be subject to limits on contribution receipts from such committees. The two national political party committees will be limited to an amount equal to 2 cents times the voting age population of the United States. In any two year election cycle the Congressional political party committees will be limited to an amount equal to 30 percent of the amount permitted to be spent pursuant to section 441(a)(d) (Title 2, United States Code) on behalf of all candidates for the House or Senate. The limit on such receipts applicable to State political party committees, and their subordinate committees, will be an amount equal to the greater of $25,000 or 2 cents times the State's voting age population.

REPORTING AND DISCLOSURE

The bill amends the Federal Election Campaign Act of 1971 in a number of respects to improve its operation. A main thrust of these changes is in the area of the reporting requirements of section 434 (Title 2, United States Code). Some of these changes relate directly to the operation of the public financing provisions. All candidates will be required to file certain reports. The first report to be filed by all candidates for the Senate will be of a candidate's intent to abide by the spending limits or not, and it would be filed within one day after the candidate qualifies for the general election ballot under State law; subsequent reports would be required by those who choose not to participate when such candidate exceeds the spending limit and again when the candidate exceeds twice the limit. The Commission is required to give a participating candidate notice within 24 hours of the filing of such a report and is authorized to make its own findings regarding such spending and notify a participating candidate based on its own findings.

New reporting requirements will also apply to any person, or persons acting in concert, making independent expenditures in a federal election. Within 24 hours after such a person, or persons acting in concert, incurs or becomes obligated to incur an expenditure in excess of an aggregate amount of $10,000 in a two year election cycle against a candidate or in favor of a candidate's opponent, such person is required to notify the Commission and the appropri-

ate Secretary of State of the expenditure and the identity of the candidate it is intended to support or oppose. During the general election period the Commission is required to notify any participating candidate who is so identified within 24 hours of the filing of such a report and to certify payment for that candidate directly to the Secretary of the Treasury. The Commission is also authorized to make its own findings regarding such independent spending and make appropriate notifications based on its own findings. Notice to a candidate by the Commission is not required before the general election period.

Certain provisions of this bill will affect the reports now required under the Act. The bill will require candidates and their authorized committees to aggregate financial data in their reports on an election cycle basis, rather than a calendar year basis. Another amendment would specify that candidate reports include the relevant expenditure information regarding a secondary payee in cases where expenditures are made to a secondary payee by a person providing consulting or other services to a candidate. A new provision would require a political committee that engages in non-federal election activities and maintains separate accounts for such activities to report its receipts and expenditures for activities that may influence a federal election.

Amendments to the definitions in Section 431 (Title 2, United States Code) would have the effect of broadening disclosure by changing the information and activities required to be reported. The definition of "identification" will be modified to require reporting of a person's permanent residence rather than one's mailing address. The definitions of "contribution" and "expenditure" have been modified so that certain activities that were exempt for all purposes under the Act will no longer be exempt for reporting purposes when in excess of $200. Such reportable contributions or expenditures (popularly known as "soft money") in excess of $200 will include those pertaining to political party building funds, state or local party committee slate cards, volunteer materials and state or local political party registration and get out the vote campaigns.

OTHER AMENDMENTS

The making of a contribution through an intermediary or conduit will be restricted and, in some instances, prohibited to the extent it exceeds the contribution limit of the person engaging in such activity. In any case in which a contribution is made through another person, the maker will be required to make the check payable to the candidate for whom it is intended, and not to the person acting as conduit; otherwise it will be credited against the contribution limit of the conduit as well as that of the contributor. Earmarking of contributions will be prohibited to the extent it involves amounts in excess of the contribution limit of the conduit. Political committees, their officers, employees, and connected organizations and their officers and employees acting on behalf of the connected organization will be prohibited from acting as conduits or intermediaries of contributions to candidates to the extent such contributions exceed the contibution limit of such committees or individuals. Any such contributions must be counted against the commit-

tees' or individuals' own contribution limits. Political party committees will be permitted to so act beyond their contribution limits only in the context of joint fundraiser activities with candidates or other party committees.

The bill specifies certain activities and relationships between candidates and other persons that will be considered to constitute cooperation, coordination or in concert for the purposes of determining whether or not an expenditure is independent and thus not subject to contribution limits of the Act. Once such a relationship is established, even if before a person formally becomes a candidate, it will continue throughout the election cycle for purposes of determining the independence of such a person's expenditures during a campaign. Controlled, coordinated, or prearranged expenditures are to be treated as contributions according to the Supreme Court in *Buckley* v. *Valeo,* 424 U.S. at 46–47. Any televised political broadcast sponsored by a person with an independent expenditure will be required to display, throughout the broadcast, a statement identifying the sponsor, and if a committee, any affiliated organizations. Similar disclosure information will be required in other forms of political advertisements by persons acting independently of a candidate.

A limit of one cent times the voting age population of a State will be imposed on expenditures by State and local party committees for materials used in association with volunteer activities and the types of such materials will be limited.

The bill contains a number of additional amendments, described further in this report, which reflect the experience of past elections and are designed to improve the operation of the Act.

Committee Action

S. 2 was introduced on January 6, 1987 by Senators Boren, Byrd, Chiles, Kennedy, Stennis, and Sanford to amend the Federal Election Campaign Act of 1971 to provide for a voluntary system of spending limits and partial public financing of Senate general election campaigns and to limit contributions by multicandidate political committees, and for other purposes, and referred to the Committee on Rules and Administration. On March 5 and 18, and April 22 and 23 the committee received testimony from over 30 witnesses on S. 2 and other bills before the committee to amend the Federal Election Campaign Act of 1971 (S. 50, S. 179, S. 207, S. 615, S. 625, Amendment #36 to S. 2, and S. 725). The committee also received a number of written statements on these proposals which, with the testimony of the witnesses, are part of the hearing record of these matters. The committee also incorporates in this hearing record the printed hearing record of the hearings conducted by the committee during the 99th Congress on a number of similar bills.

On April 29, 1987 the committee held a markup session on S. 2, by unanimous consent adopted an amendment in the nature of a substitute offered by Chairman Wendell H. Ford with the understanding that it be considered original text for the purpose of offering amendments, considered an amendment thereto, and voted to report S. 2, as amended, and recommend passage of the bill by the Senate.

PUBLIC FINANCING OF SENATE ELECTIONS

The Nation has experienced the successful implementation of public financing of Presidential primaries, conventions and general elections in 1976, 1980 and 1984 with corresponding limitations on the expenditures that could be made in those campaigns. Public funds expended on those Presidential elections have increased from approximately $72 million in 1976 to approximately $134 million in the 1984 Presidential elections. All of these elections were financed from the Presidential Election Campaign Fund to which millions of citizens, approximately 35 million each year, have contributed since its inception in 1971. This represents the most broadly based financing of Presidential elections in history. After an extensive examination of the Presidential public financing system, the Commission on National Elections concluded, "Public financing of presidential elections has clearly proved its worth in opening up the process, reducing undue influence of individuals and groups, and virtually ending corruption in presidential finance."

Because the general election campaigns of the two major party candidates were financed entirely with public funds in each of those election years, large contributions from political action committees established by various business, labor, ideological and issue-oriented organizations, and from individual donors were not a significant factor in those Presidential campaigns. However, there was a significant increase in the growth of such interest group contributions to Congressional campaigns. Contributions by such political action committees have steadily increased. In 1974 their contributions amounted to $12.5 million for all Congressional candidates. By the 1986 elections political action committee contributions to Senate candidates alone amounted to almost $45 million and represented an average of 23 percent of each candidate's receipts from all sources. Political action committee contributions to all Congressional candidates had grown to $132.2 million by the 1986 campaigns, an increase of over 1000 percent (or over 500 percent, controlling for inflation) since the 1974 elections.

Public financing of Senate general election campaigns will encourage broader public participation through the tax checkoff, while retaining the right of individuals and groups of individuals to participate through the political committees of their choice in the financing of the non-public finance segments of the federal election campaigns as well as the campaigns of those candidates who choose not to participate in the public financing system.

Although it was decided to extend the voluntary spending limits to the primary elections, and thus to the full Senate six year election cycle, as a condition for a candidate to receive public financing, the committee limited public financing to the general election period. The bill provides for reports to the Senate regarding the operation of this program so that the Senate may have additional information should it wish to consider extending the financing to the primary elections at a later date. The committee decided to limit the public financing provisions of this bill to Senate candidates, since it viewed the financing of House campaigns as a matter which should be determined initially by the House of representatives.

EXPENDITURE LIMITS TIED TO PUBLIC FINANCING

The committee received testimony concerning the spiralling increase in the cost of campaigning for the Senate in recent years. In the last six years the candidates' cost of all Senate campaigns has more than doubled, from $73 million in the 1980 elections to over $182 million in 1986; and the average cost of a winning Senate campaign has increased from $1.2 million in 1980 to $3.1 million in the election of 1986. While the increasing cost of waging a Senate campaign may not, by itself, justify a change in the system, the prolonged and extensive fundraising activity necessary to raise such enormous sums has had an impact on the openness of the system to challengers and the operation of the Senate itself that does justify the concern of the committee.

The system of spending limits and public financing that would be established by this bill addresses some of the concerns of the committee and serves several important public interests. Such a system would facilitate communication by candidates wtih the electorate by using public money to open the system and to enhance public discussion, reduce the risk of corruption and the appearance of corruption by diminishing the role of private contributors, and relieve the candidates of the burdens of fundraising and afford them more opportunity to address the issues and communicate with the voters.

The system of voluntary spending limits tied to partial public financing in this bill is consistent with the decision of the Supreme Court. In *Buckley* v. *Valeo* the Court held that: "Congress may engage in public financing of election campaigns and may condition acceptance of public funds on an agreement by the candidate to abide by specified expenditure limitations." (424 U.S. at 57, n.65 (1976)).

The committee is mindful of the need for sufficiently high expenditure limits to encourage competitive races and facilitate, rather than restrict, communication by candidates with the electorate, while keeping the limits at a reasonable level in consideration of both the need to curb campaign costs and the desire to conserve the public funds involved. The committee was also mindful of the need to create a system that would allow a rational candidate to choose to participate in the system without losing the capacity to run a competitive campaign. In order to achieve these objectives the formula adopted is $400,000 plus 30 cents times the voting age population of the State up to a voting age population of 4 million, plus 25 cents times the voting age population in excess of 4 million, but not less than $950,000, nor more than $5.5 million. These limits, when takes together with the primary election limit and the compliance fund would provide a six year Senate spending limit for participating candidates of approximately 177 (197 with runoff election) percent of the general election spending limit. That amount compares favorably, especially in view of the likelihood of decreased fundraising costs associated with public financing, with the amounts suggested by two campaign finance experts who testified that, for an entire election cycle, one and one-half to two times the general election limits of the original bill would be necessary to assure competitive campaigns for challengers.

The following table sets forth the general election, primary and runoff expenditure limitations, and the qualifying thresholds for each State. As in the case of expenditure limitations in Presidential elections, the revised S. 2 provides for future automatic increases in these limits, based on cost of living increases, using the year of the first election under this bill's public financing provisions as the base year.

PUBLIC FINANCING OF SENATE ELECTIONS—S. 2 AS AMENDED

	General election limit	Primary election limit	Runoff election limit	Qualifying threshold
Alabama	$1,271,200	$851,704	$254,240	$290,400
Alaska	950,000	636,500		150,000
Arizona	1,093,600	732,712		231,200
Arkansas	950,000	636,500	190,000	171,300
California	5,481,250	2,750,000		650,000
Colorado	1,110,100	743,767		236,700
Connecticut	1,125,400	754,018		241,800
Delaware	950,000	636,500		150,000
Florida	2,807,500	1,881,025	651,500	650,000
Georgia	1,679,500	1,125,265	335,900	431,800
Hawaii	950,000	636,500		150,000
Idaho	950,000	636,500		150,000
Illinois	2,709,000	1,815,030		650,000
Indiana	1,597,900	1,070,593		399,300
Iowa	1,033,300	692,311		211,100
Kansas	950,000	636,500		178,500
Kentucky	1,210,900	811,303		270,300
Louisiana	1,337,800	896,326		312,600
Maine	950,000	636,500		150,000
Maryland	1,388,500	930,295		329,500
Massachusetts	1,714,500	1,148,715		445,800
Michigan	2,251,250	1,508,337		650,000
Minnesota	1,316,200	881,854		305,400
Mississippi	950,000	636,500	190,000	182,400
Missouri	1,510,600	1,012,102		370,200
Montana	950,000	636,500		150,000
Nebraska	950,000	636,500		150,000
Nevada	950,000	636,500		150,000
New Hampshire	950,000	636,500		150,000
New Jersey	2,880,000	1,929,600		570,000
New Mexico	950,000	636,500		150,000
New York	3,953,500	2,648,845		650,000
North Carolina	1,766,500	1,183,555	353,300	466,600
North Dakota	950,000	636,500		150,000
Ohio	2,567,750	1,720,392		650,000
Oklahoma	1,113,100	745,777	222,620	237,700
Oregon	992,800	665,176		197,600
Pennsylvania	2,844,000	1,905,480		650,000
Rhode Island	950,000	636,500		150,000
South Carolina	1,127,500	755,425	225,500	242,500
South Dakota	950,000	636,500	190,000	150,000
Tennessee	1,459,300	977,731		353,100
Texas	3,493,000	2,340,310	698,600	650,000
Utah	950,000	636,500		150,000
Vermont	950,000	636,500		150,000
Virgina	1,665,500	1,115,885		426,200
Washington	1,368,700	917,029		322,900
West Virginia	950,000	636,500		150,000
Wisconsin	1,447,300	969,691		349,100
Wyoming	950,000	636,500		150,000

A candidate who chooses to participate in the public financing system also must agree to limit to $20,000 the amount he or she may spend of personal funds, including members of the candidate's immediate family, the election cycle. This provision is similar to one of the Presidential public financing statute and is intended to be subject to similar interpretation. Members of the candidate's immediate family would be subject to existing contribution limitations, as this provision would not impose any additional or new limits on such family members.

Higher spending limits, and additional public funds based thereon, will be permitted for candidates running in certain States where a candidate is required, in order to reach the voters in that State through the available media, to broadcast from neighboring States at a cost far in excess of what would be required to reach the State's voters. In such States, the spending limit is set at $400,000 plus 45 cents times the voting age population up to 4 million and 40 cents times the voting age population over that figure, but not less than $950,000 nor more than $5.5 million.

The bill, as amended, makes another major change in the original bill: that is, the extension of expenditure limits to the primary and runoff elections as a condition to which Senate candidates must agree in order to receive public financing. Because the activities previously associated with Senate campaigns would probably not be curtailed, but merely be shifted to the primary election period, the committee considered the general election limits alone to be ineffective to achieve the goals of this legislation. In order to carry out the general purposes of the bill, which have been previously enumerated, the committee concluded it was necessary to extend spending limits to the primary period.

Thus, the committee adopted a primary election limit of 67 percent of the general election spending limit and a runoff limit of 20 percent of the general election spending limit. By defining the primary election period to begin the day after the last general election for the seat in question, the bill effectively limits Senate campaign spending throughout a six year Senate election cycle.

The bill provides for a compliance fund equal to 10 percent of the candidate's general election limit in order to deal with the likelihood of additional compliance expense under this system. This provision permits expenditures for such purpose both during and after a general election without such expenditures counting against either such general election spending limit or the next primary election spending limit. It is intended that such fund be used solely for the purpose of paying for legal and accounting services incurred in relation to compliance with the Act. The compliance fund is not intended to serve as a reserve or revolving fund; therefore, once funds have been transferred into the account, they may not be transferred back to the campaign fund or used for any purpose other than compliance. They may only be transferred to another compliance fund established by the candidate if he or she set up another campaign committee for the same or another office, or to the Treasury. In the event of extraordinary compliance related expenses, a candidate will be permitted to petition the Commission for permission to raise and spend an amount in excess of that fund. Before authorizing any additional funds for compliance, the Com-

mission should first be satisfied that the candidate did not use any portion of the 10 percent compliance fund for any purpose other than compliance. It is expected that the Commission will make any such grant only in the event of extraordinary circumstances related directly to compliance matters and that it will include such safeguards as it deems necessary to assure that such expenditures are made only for the specific purposes authorized by the Commission pursuant to the Act.

ELIGIBILITY FOR FUNDS

The eligibility for all candidates, whether a major party nominee, a minor party nominee, or an independent candidate, is based on the candidate raising a qualifying threshold of private contributions. The formula to determine the amount of a threshold in any State is 10 cents times the voting age population of the State, but not less than $150,000, nor more than $650,000. All of such funds must be contributed directly to the candidate by individuals in amounts aggregating up to $250 and must be received after January 1 of the year preceding the election. To further assure that such candidates have a base of support from within their State, at least 75 percent of the threshold amount must be raised from contributors from within the candidate's State. The committee considers such a threshold to be a fair requirement that could be met by a serious candidate with little difficulty, while preventing frivolous candidates from gaining access to public funds to artifically boost their campaigns without connection to any meaningful degree of public support. Larger aggregate contributions may be received from a contributor, but in such case only the first $250 will be creditable toward the threshold; as with any contribution that does not comply with these threshold requirements, the balance may be used for primary, runoff, or general election purposes or transferred to the compliance fund.

To receive public funds, a candidate must be opposed in the general election and must certify that he or she has raised the qualifying threshold, and has not exceeded the primary and, where applicable, the runoff spending limits. Also the candidate must agree to certain administrative requirements, not to exceed the general election spending limits, not to accept contributions in violation of the Act, and not to accept any contribution for the general election in excess of the difference between the spending limit and the amount of public funds to which he or she is entitled. The last restriction is so phrased to permit a candidate to raise and spend the threshold amount, subject to the applicable restrictions on sources and amounts, during the primary period, subject to the primary period spending limits, and to accept and spend during the general election period any legal contributions without regard to the special threshold conditions, to replace any portion of the threshold spend during the primary period.

Although the conditions regarding eligibility for public financing are the same for all candidates, the bill does differentiate between candidates of major parties and other candidates. The former will be entitled to receive a grant of public funds equal to the difference between the amount of the qualifying threshold and the general

election spending limit. Other candidates will be entitled to matching payments equal to contributions that meet certain conditions, similar to those that apply to threshold contributions, up to a maximum of 50 percent of the amount that would be payable to a major party candidate. Minor parties and independent candidates are differently situated from major party candidates, the Supreme Court recognized in *Buckley* v. *Valeo,* and may be treated differently, as also was upheld by the Supreme Court in that case. In that case the Court noted that there are strong governmental interests against use of public money to foster frivolous candidacies, create a system of splintered parties, and encourage unrestrained factionalism (424 U.S. at 101).

CAMPAIGN ADVERTISEMENTS

A number of measures referred to the committee attempted to curb the recent trend toward "negative" media campaigning, by making the candidates more accountable in the minds of the voters for the level and quality of campaign debate. The committee considered a number of bills intended to address this situation and heard testimony relating the "negative" nature of campaign advertisements to the present high level of voter apathy in recent elections. While the committee is concerned with this situation, it is also mindful of the constitutional limitations on imposing restrictions in this area. It has attempted to balance these concerns by requiring, as one of the conditions of eligibility for public funds, candidates to appear on media ads in which reference is made to their opponent, if the opponent is also a participant in the public finance system. While it does not seek, thereby, to regulate the content of political advertisements, it does require that candidates using public funds be accountable for their content and message. The agreement is that if a reference is made about an opponent in a candidate's TV advertisement or announcement, the candidate will make that reference personally and will be identifiable for at least fifty percent of the advertisement or announcement.

LIFTING OF EXPENDITURE LIMITS

This bill requires that a candidate who accepts public financing must agree to the expenditure limits for the entire election cycle. The bill provides incentives to participate in public financing by reassuring candidates that they will not be trapped within the spending limits if their privately financed opponents exceed these limits. In the absence of such provisions, public financing would be a less attractive option for Senate candidates. The bill, therefore, sets out certain procedures that require a candidate to file a declaration within one day after qualifying for the general election ballot of whether or not he or she intends to abide by the spending limits of the bill and to notify the Commission when, in fact, one's expenditures do exceed those limits. The publicly financed candidate would then be entitled to exceed the limit and would also be entitled to additional funds in the form of a grant equal to the general election spending limit, if a major party nominee, or to payments up to 50 percent of that limit on a match basis, if not a major party candidate. A candidate who did not participate would be required to

notify the Commission again upon exceeding twice the limit, in which case the participating candidate would be entitled to raise private funds and to make expenditures without regard to the limits.

These provisions of the bill do not infringe on the right of non-participating candidates to raise and spend whatever amount of funds they may deem necessary to compete. They also serve as an incentive to all candidates to abide by the limits.

Other Amendments to the Federal Election Campaign Act

INDEPENDENT EXPENDITURES

A second development since the inception of public financing of Presidential elections in 1976 has been the growth and influence of independent expenditures in both Presidential and Congressional elections. In the 1986 elections, some $8.5 million was spent by outside groups and individuals in support of or opposition to federal candidates, compared with just over $300,000 in 1978.

The first objective of the bill with regard to independent expenditures is to assure that such spending is truly independent of the candidate who is supported by such expenditures. To accomplish this the bill sets out certain relationships between a candidate and other persons that by definition constitute coordination, cooperation or concert for the purpose of determining whether expenditures by such person are independent and, therefore, outside the contribution limits of the Act. It also specifies that such relationships, once entered into during a campaign, even if before a person officially becomes a candidate, may not thereafter be abandoned during a campaign for the purpose of making unlimited expenditures in support of that candidate or in opposition to his or her opponent. It is not the purpose of the committee to restrict in any way the valid and legitimate participation of persons in election campaigns independent of a candidate. It is its purpose to define certain relationships that are inconsistent with a claim of independence from a candidate and to prohibit persons having such a relationship with a candidate from making expenditures outside the contribution limitations and restrictions of the Act. The committee finds that the relationships specified in the bill raise such a strong presumption of coordination, cooperation or concerted activity between the parties that any expenditures by one of the parties that benefit the candidate cannot reasonably be considered independent and should be subject to the contributions limitations of the Act.

A candidate who accepts public funding will be subject to a spending limit; he is protected against disproportionate spending by his opponent because of the provisions of additional public funds and the ultimate removal of spending limits, but there is also the possibility that an outside group or individual will make massive independent expenditures against him or her, or in favor of his or her opponent, leaving his or her hands tied because of the spending limit. The solution proposed by this bill is to provide additional public funds on a matching basis, and a higher spending limit, for any independent expenditures by the same source that exceed $10,000. The bill requires reports by persons making independent

expenditures to the Commission within 24 hours after such expenditures, aggregating in excess of $10,000, are incurred or obligated. The Commission is then required, during the general election period, to certify payment of a matching amount of public funds to the candidate directly with the Treasury.

The provision of the bill serves First Amendment values by increasing the amount of information available to the electorate. It does not limit the speech of persons making independent expenditures; they remain free to make such expenditures in unlimited amounts. It is similar to other laws that provide financial assistance to the exercise of free speech, such as aid to public broadcasting and other forms of educational media. "[T]he central purpose of the Speech and Press Clauses was to assure to society in which 'uninhibited, robust, and wide-open' public debate concerning matters of public interest would thrive, for only in such a society can a healthy representative democracy flourish . . . Legislation to enhance these First Amendment values is the rule, not the exception." 424 U.S. 1, 93 n.127 (1976)

A third objective with regard to independent expenditures is to enable voters to more readily understand who is sponsoring media advertisements. Such ads by independent groups would be required to run a continuous disclaimer stating who is paying for the ad, in order to reduce voter confusion as to whether such messages may be from candidates themselves. This should promote greater accountability in the political system, by establishing a clearer link between the voter and the candidate, with less interference from outside groups whose names do not appear on the ballot.

AGGREGATE POLITICAL COMMITTEE LIMITS

As noted earlier, since 1974 there has been a significant increase in the amount of money contributed by political action committees to candidates for Congress and in the ratio of these contributions to the total contributions received by such candidates. With regard to State candidates, the ratio of such contributions to overall contributions since 1984 has increased over 20 percent, from 18 percent in 1984 to 23 percent in 1986. The average winning Senate candidate received $850,000 from such committees in 1986, compared with $30,000 in 1980. Whereas 14 candidates received more than $1 million from such committees in 1986, no Senate candidate received this much money in 1980. The committee heard a great deal of testimony from many witnesses concerning the explosive growth in the number of such committees, from 608 in 1974 to over 4,100 in 1986, and in the amounts they contribute to congressional campaigns, from $12.5 million in 1974 to over $130 million in 1986. The proportion of such contributions to the total receipts by congressional candidates has also increased dramatically from 15.7 percent in 1974 to 31.7 percent in the last election.

The committee is concerned with the impact of such an increase in reliance on such funds on the campaign finance system. The ability of political committees having similar interests to join together and make large contributions tends to undermine the effectiveness and integrity of the present system of limits on contributions. It believes that the imposition of a ceiling on aggregate con-

tributions from such committees would restore the integrity and effectiveness of the existing and constitutionally sound limits on contributions by any single such political committee, person or other individual to a candidate.

This bill would establish for the first time an aggregate limit on the total contributions a congressional candidate may accept from all nonparty multicandidate political committees or separate segregated funds (popularly known as political action committees or PACs). A candidate for the House of Representatives could accept a maximum of $100,000 in such contributions, and Senate candidates would be limited to an amount equal to thirty percent of the primary spending limit for their State which would range $190,950 to $825,000.

In anticipation of a diversion of such special interest money into indirect candidate contributions through party committees, limits will also be placed on the aggregate receipts of such contributions by the national political party committees, the Congressional political party committees and by the State political party committees.

BUNDLING AND EARMARKINC OF CONTRIBUTIONS

The committee was also concerned with the practice whereby a political committee solicits a large number of contributions from committee members for candidates, and then delivers, or arranges for the delivery of, a large number of such contributions to candidates, usually in amounts far in excess of the contribution limit applicable to such a committee. A related practice, that of a committee receiving contributions from contributors, earmarked for certain candidates, but made payable to the committee, also raises concern, especially with regard to determining the intent of the contributor.

In some circumstances these practices may amount to an evasion of the existing statutory contribution limits. Under existing law, an intermediary must count earmarked or bundled contributions against its own contribution limits if it exercises any direction or control over the making of the contribution. Some political committees appear to ignore this requirement. In any case such practices have the effect of undermining the present sound system of contribution limitations. This bill intends to clarify this situation.

The bill provides that a political committee cannot serve as a conduit or intermediary for contributions in excess of its own contribution limit to candidates either by soliciting contributions made out to the candidate and delivering, or arranging for the delivery of such contributions to the candidate, or the practice, by any person, or receiving "earmarked" contributions, that is, of receiving checks made payable to the committee or person with instructions to make contributions to specified candidates in the name of the original contributor. This restriction would not apply to joint fundraising activities by political party committee, either separately or with candidates or their committees.

These provisions would not place any new or additional restrictions on the right of any committee or person to communicate with a person and encourage such person to support or to contribute to a candidate. They do, however, require, to the extent such contribu-

tions exceed the contribution limitation applicable to such committee or person, that the contributor make the contribution payable to the candidate and send it directly to the candidate.

REPORTING AND DISCLOSURE

The committee was concerned with the entire area of unreported or unregulated activities that influence federal elections, but are now exempt from either the reporting or regulation provisions of the Act. On re-examining such activities, it was decided that many of those activities directly affect federal elections and, therefore, should be reported, and in some cases restricted. These added disclosure provisions are designed to address some of the "soft money" problems referred to by numerous witnesses at the hearings.

One area of so-called "soft money" activity in which the committee concludes that reporting is necessary is that of committees or organizations engaging in non-federal activities, such as voter registration and get-out-the-vote drives and general political advertising that may influence federal elections. It should be noted with regard to this reporting provision [section 5(h)(1)] that the reference is to "political committee" as defined in the Act; it is not the intent of that provision to modify the definition of "political committee" or the allocation between federal and non-federal accounts.

State and local party committee expenditures for materials for volunteer activities would be limited to one cent times the voting age population of the State, and the type of materials for which the money may be used would be restricted to such items as pins, bumper stickers, handbills, brochures, posters, party tabloids and yard signs, and not for telephones, computers, computer programs or mass mailing equipment. Any such expenditure in excess of $200 would be reportable as a contribution or expenditure. That same reporting requirement would apply to the building funds of State and national parties, payments by a State or local committee of a political party for the costs of slate cards or sample ballots, or the costs of get out the vote or registration drives by State and local party committees to the extent that such expenditures are for the purpose of influencing federal elections.

The committee found that certain reporting requirements should be revised in the interest of better disclosure of relevant information in reports. One relates to a change enacted in the 1980 amendments that permitted the use of an individual's mailing address rather than the individual's permanent residence. Experience since the change indicates that the latter indentification is preferable for purposes of more accurately identifying an individual.

Another practice relates to a candidate being permitted, in reporting the required information with regard to an expenditure, to limit his report to identify the person retained to provide services or to do consulting work, even though that person retained services of others, or purchased materials, for the candidate, in amounts that exceed the $200 expenditure reporting threshold. Such a reporting practice is clearly contrary to the full and timely disclosure purposes of the reporting provisions of the Act. It is the purpose of the provision in this bill to require that information about any expenditure in excess of the reporting threshold made to a person

who provides services or materials for the candidate be reported by the candidate, without regard as to whether payment was made directly to such person by the candidate or by another party for the candidate.

Regulatory Impact of S. 2, as Amended

Pursuant to rule XXVI, paragraph 11(b) of the Standing Rules of the Senate, the committee received the following information from the Federal Election Commission as to the regulatory impact of S. 2, as amended, as reported by the committee:

Question 1. An estimate of the number of individuals and businesses to be regulated by the Commission, and a determination of the groups and classes of such individuals and businesses.

Answer. The Commission regulates seven categories of persons and political committees: Presidential candidates and committees; candidates and committees engaged in races for House and Senate seats; party-related committees; non-party related political committees; individuals or committees making independent expenditures; delegates and delegate committees; and persons making expenditures for communication costs. The table which follows indicates the number of filers in each category, the number of reports and statements filed by each, and the gross receipts and expenditures for the period covering calendar year 1986.

SUMMARY OF DISCLOSURE FILES

	Total filers existing in 1986	Filers terminated as of 12/31/86	Continuing filers as of 12/31/86	Number of reports and statements in 1986	Gross receipts in 1986	Gross expenditures in 1986
Presidential	328	14	314	771	$2,366,751	$2,834,739
Candidates	171	2	169			
Committees	157	12	145			
Senate	926	139	787	4,232	178,456,620	200,118,182
Candidates	454	92	362			
Committees	472	47	425			
House	4,393	867	3,526	21,162	205,348,851	209,878,458
Candidates	2,219	602	1,617			
Committees	2,174	265	1,909			
Party [1]	490	43	447	3,936	297,976,679	284,216,764
Delegates	11	7	NA	20	0	62
Nonparty	4,591	434	4,157	42,039	206,960,774	234,841,024
Labor Committees	419	35	384			
Corporate Committees	1,901	157	1,744			
Membership, Trade & Other Committees	2,271	242	2,029			
Communication cost filers	15	NA	NA	256	NA	1,985,518
Independent expenditures by persons other than political committees	7	NA	NA	10	NA	622,972

[1] Party financial figures are inflated by about 40 percent due to double reporting by some national level party committees.

Question 2. The Commission's opinion as to the economic impact of such regulations on the individuals, consumers and businesses affected.

Answer. The bill is so specific in its requirements that the major economic impact on affected individuals and organizations is directly imposed by the bill, not the implementing regulations.

Question 3. The Commission's opinion on the impact on the personal privacy of the individuals affected.

Answer. One purpose of the Federal Election Campaign Act is to provide for the disclosure of contributions and expenditures made in campaigns for federal office, which obviously has some impact on privacy. Congress felt that whatever impact on privacy resulted was warranted in order to promote the policy of disclosure. The recordkeeping and reporting proposals contained in the substitute amendment to S. 2 are consistent with the disclosure provisions now found in the Act. Thus, any impact on privacy is due to the bill rather than the implementing regulations.

Question 4. A determination of the amount of additional paperwork that will result from regulations to be promulgated by the Commission under the terms of the bill. This determination may include, but need not be limited to, estimates of the amount of time and financial costs required of affected parties, showing whether the effects of the bill could be substantial, as well as reasonable estimates of the recordkeeping requirements that may be associated with the bill.

Answer. Certain parts of the bill may result in some additional reporting, such as the provisions seeking reporting of activities by non-federal committees that may influence federal elections. It may also result in some additional recordkeeping, as, for example, by publicly financed Senate candidates. These new requirements would be limited to the specific groups affected and do not appear to be substantial increases in the recordkeeping and reporting obligations of the Act.

As in the past, the Commission will place a high priority on the reduction of unnecessary paperwork in promulgating regulations under the bill. This has been a major goal of the Commission's rulemaking process, to avoid burdensome requirements for the regulated community.

Cost Estimate

In compliance with paragraph 11(a) of rule XXVI of the Standing Rules of the Senate, the estimate of costs of this measure prepared by the Congressional Budget Office pursuant to section 403 of the Congressional Budget Act, is as follows:

CONGRESSIONAL BUDGET OFFICE COST ESTIMATE, MAY 11, 1987

1. Bill number: S. 2.

2. Bill title: Senatorial Election Campaign Act of 1987.

3. Bill status: As ordered reported by the Senate Committee on Rules and Administration, April 29, 1987.

4. Bill purpose: The bill would establish a system of campaign spending limits and partial federal financing for Senate candidates in general elections. To become entitled to receive federal cam-

paign funds, a Senate candidate would have to meet several eligibility requirements, including raising a threshold level of contributions from individuals and agreeing not to exceed spending limits based on state voting population. The Federal Election Commission (FEC) would be required to certify to the Department of the Treasury the eligibility of each candidate who applies for federal funds, and the Treasury would then make the payment from the Presidential Election Campaign Fund. These additional payments from the fund would be financed by doubling the campaign check-off on individual income tax return forms, thus increasing the amount of tax revenues channeled into the fund (without changing total tax revenues).

The FEC would be required to audit a sample of the candidates and to report to the Senate on its activities after each election. The FEC would also be authorized to participate in judicial proceedings regarding federal campaign financing. The bill authorizes the appropriation to the FEC of such sums as may be necessary to carry out additional functions involved with Senate campaigns.

S. 2 would also establish reporting requirements for Senate candidates and limit the contributions that political action committees could make to campaigns for seats in the Senate or the House of Representatives.

5. Estimated cost to the Federal Government:

[By fiscal year, in millions of dollars]

	1988	1989	1990	1991	1992
Payments to entitled Senate candidates:					
Estimated budget authority	37	38	38	38	38
Estimated outlays	75	.....	65	.....	80
Additional costs of the Federal Election Commission:					
Estimated budget authority	1	1	1	1	1
Estimated outlays	1	1	1	1	1
Bill total:					
Estimated budget authority/authorization level	38	39	39	39	39
Estimated outlays	76	1	66	1	81

The costs of this bill fall within budget function 800.

Basis of estimate:

Assuming that this bill is enacted before November 1987, the 1988 Senate general election would be the first to be covered by partial public financing. Because the bill would double the campaign check-off on income tax returns, CBO assumes that the amount earmarked for the campaign fund would double, resulting in an additional $37 million to $38 million of budget authority available to the fund each year, beginning in 1988.

The amount of federal funds paid to candidates depends largely on the extent of candidates' participation in the system. If both candidates in each election agree to be bound by the spending limit, each would receive the amount of the spending limit minus the threshold amount each must raise privately. In 1988, for example, the total federal payment under this scenario would be about $87 million. If only one of the candidates in each election applies for eligibility for public financing, that candidate would receive

twice the amount of the spending limit minus the threshold amount. That outcome would result in the maximum federal outlays possible under S. 2—about $98 million in 1988. If neither candidate in a Senate election choose to participate in the system, neither would have to stay within the spending limit. Then, neither candidate would be entitled to funding, and the federal government would not have to make a payment for that election.

CBO's estimate of the amount of federal payments for each election cycle assumes that in most of the contests, at least one, if not both, of the major party candidates participates in the public financing system. However, based on the experience of the 1986 election, it appears that during each election cycle there are likely to be several contests in which both candidates could privately raise more funds than allowed by the spending limit, and thus might choose to decline public financing. CBO assumes that in about 20 percent of the contests in each cycle, both candidates would decline public financing. Because we cannot estimate which states' elections would fall in this category, we assume that such elections would save federal outlays at the rate of the average payout per state if all contests qualified for federal financing. CBO's estimates do not include payments for minor party candidates or matching payments for independent expenditure activity because, based on recent historical experience, it is unlikely that candidates would qualify for these additional payments.

The outlays estimates also assume that all payments to federal candidates occur in the fiscal year that ends two months before the general election. Eligible candidates would have to apply within seven days after qualifying for the general election (most likely after the primary election), and the Treasury would be required to make prompt payment to candidates after the 48-hour certification period for the FEC has elasped. Based on these assumptions, CBO estimates that the 1988 payout would be about $75 million. The 1990 election would cost only about $65 million (using CBO's baseline assumption for inflation) because of the smaller population sizes of the states holding Senate elections that year. In the 1992 election, CBO estimates that Senate candidates would apply for about $90 million in federal financing, but each would receive only a *pro rata* share, totaling $80 million, because the fund would not have sufficient balances to cover the Senate elections once the payment for the Presidential campaign is made.

Based on information from the FEC regarding the additional functions the bill would require of it, CBO estimates that enactment of S. 2 would cost the FEC an additional $1 million annually for administrative expenses.

6. Estimated cost to state and local governments: None.

7. Estimate comparison: For the version of S. 2 as introduced, the FEC has estimated a federal payment of $93 million to Senate candidates in 1988, assuming that both major party candidates in each of the 33 general elections will opt for public financing. The FERC's estimate is different from CBO's because it is based on an earlier, more costly version of the bill. In addition, the FEC makes different assumptions about the number of candidates who would participate in public financing.

8. Previous CBO estimate: None.

9. Estimate prepared by Jim Hearn.
10. Estimate approved by James L. Blum, Assistant Director for Budget Analysis.

SECTION-BY-SECTION ANALYSIS—COMMITTEE SUBSTITUTE AMENDMENT TO S. 2

Section 1.—This Act may be cited as the Senatorial Election Campaign Act of 1987.

Section 2.—Adds new title to the Federal Election Campaign Act of 1971, entitled—

TITLE V—SPENDING LIMITS AND PUBLIC FINANCING FOR SENATE ELECTION CAMPAIGNS

Definitions

Section 501 defines the terms authorized committee, candidate, contribution, election cycle, eligible candidate, expenditure, general election, general election period, primary election, primary election period, runoff election, runoff election period, Senate Fund, voting age population, major party, immediate family, and incorporates by reference all the definitions in Section 301 of the Federal Election Campaign Act (2 U.S.C. 431).

Eligibility

Section 502(a) provides that a candidate will be eligible, and may apply to the Commission, for payments if the candidate certifies he or she has received contributions from individuals only of up to $250 from any one individual; said contributions were received after January 1 of the calendar year immediately preceding the year of the election; said contributions total an amount equal to 10 cents times the voting age population of the state but not less than $150,000 nor more than $650,000; that at least 75 percent of the contributors of said contributions reside in such candidate's state; that he or she will not and has not spent more than the lesser of $2,750,000 or 67 percent of said spending limit in his or her primary election, nor more than 20 percent of said spending limit in his or her runoff election; and that at least one other candidate has qualified for said election.

The candidate must also agree to abide by expenditure limits, to accept no contributions in violation of the campaign act, to accept no contribution for the general election in excess of an amount equal to the qualifying threshold or to make up a shortage in the event of prorated payments, to deposit payments received in a segregated account in a state or federal bank, to make all expenditures therefrom by check, to furnish information to Commission about contributions and to cooperate with any Commission audit or examination.

The candidate must also agree that in any televised advertisment in which reference is made to an opponent, such candidate will make such reference personally and that such candidate will be identifiable throughout at least 50 percent of such advertisement.

Section 502(b) provides that in determining whether a candidate had accepted sufficient contributions to establish eligibility, a contribution may not be counted unless (1) it is made by a written in-

strument that identifies the contributor, (2) it is not made through or by an intermediary or party other than the contributor, (3) it is made by an individual and does not exceed an aggregate of $250, and (4) it was received after January 1 of the year immediately preceding the year of the election. The above conditions would also apply to contributions for matching payments in the case of non-major party candidates.

Section 502(c) provides for indexing of the threshold amount and sets a base year of the calendar year of the first election after enactment of the bill.

Limitations on expenditures

Section 503 sets a limitation on expenditures by candidates for the Senate who accept public funds in the amount of $400,000 plus 30 cents times the voting age population of the applicable state up to 4 million, plus 25 cents times the voting age population of the applicable state by which it exceeds 4 million, but not less than $950,000 nor more than $5.5 million, and provides that such limit shall be subject to annual adjustment based on the price index for the year of the election. It also sets a limit of $20,000 on the amount a candidate may spend of his or her own money, or that of the candidate's immediate family, for the election cycle. It also sets spending limits for eligible candidates for the primary election of 67 percent (but not more than $2.75 million), and for the runoff election of 20 percent, of the general election limit.

Section 503 would provide for an increase in such spending limit in states in which candidates are required to pay for broadcast into other states in order to reach their own constituents; in such states the limit would be set at $400,000, plus 45 cents times the voting age population up to 4 million, plus 40 cents times the voting age population over 4 million, or $950,000, whichever is greater, in no case more than $5.5 million. It would also permit participating candidates to establish with private contributions a compliance fund of up to 10 percent of the general election spending limit. A candidate with such expenses in excess of the limit would be permitted to petition the Commission to increase the amount of such fund and the fund, upon termination would be either donated to the Treasury or transferred to a subsequent compliance fund of the candidate.

Section 503 would increase the primary and runoff election spending limits by the amount of independent expenditures against a candidate or for his opponent during the two year election cycle.

Section 503 would also provide for private contributions to make up any shortage in the event of a prorated payment from the Senate Fund.

Entitlement of eligible candidates to payments

Section 504(a)(1) provides that a qualified major party candidate is entitled to receive public funds in an amount equal to the difference between the amount of contributions required to qualify and the spending limit for the applicable state. And if an opponent is not eligible and raises or spends an amount in excess of the spending limit, an eligible major party candidate is entitled to additional funds equal to the limit.

Section 504(a)(2) provides that any other qualified candidate is entitled to receive matching payments of an amount equal to the contributions received from contributors subject to the same conditions as threshold contributions, provided the total of such payments may not exceed 50 percent of the total amount to which a major party candidate would be entitled and no payment is to be made to match the contributions required to qualify. If an opponent is not eligible and raises or spends an amount in excess of the spending limit, the eligible candidate is entitled to additional funds up to 50 percent of the limit.

Section 504(a)(3) provides that all eligible candidates are entitled to "lowest unit rate" broadcast media rates and to payments equal to the aggregate amount spent by any person independently for the eligible candidate's opponent or against the eligible candidate.

Section 504 (b) and (c) permits an eligible candidate who receives such additional payments to spend such funds without regard to the spending limit, and removes the spending limit entirely for a candidate when an opponent is not eligible and raises or spends amounts that exceed twice the spending limit.

Section 504(d) requires that such payments be used to defray expenditures incurred with respect to the general election and that they not be used to repay any loan except to the extent that the proceeds of such loan were used to further the general election of the candidate, or to make any payments to the candidate or a member of the candidate's immediate family, or to make any expenditure other than to further the general election of such candidate, or to make an expenditure in violation of any law.

Certification by Commission

Section 505 requires the Commission to certify payment of funds to eligible candidates within 48 hours of a candidate's request. Determinations made by the Commission regarding certifications are final and conclusive, excerpt to the extent they are subject to examination and audit, and judicial review.

Establishment of fund; payments to eligible candidates

Section 506(a) creates a Senate campaign account within the Presidential Election Campaign Fund to contain those funds available from the tax checkoff after an amount adequate to fund Presidential general elections, conventions and primaries has been set aside.

Section 506(b) authorizes payment of funds upon certification by the Commission.

Section 506(c) authorizes the Secretary of the Treasury to reduce amounts available for payment by a percentage formula should insufficent funds be available for full payment and requires that the Secretary notify the Commission and the candidates of the need to prorate payments. Payment of general election funds are given priority over payments to compensate for independent expenditures in the event the funds are insufficient to provide for both.

Examination and audits; repayments

Section 507(a) requires the Commission to audit after each general election on a random basis 10 percent of all major party candi-

dates and 10 percent of all other candidates, all candidates after any special election, and authorizes audits of any candidate for cause.

Sections 507 (b) through (e) provide that if a candidate received more funds than he or she was entitled to, he or she must repay the amount of the excess; if funds were not used in accordance with the title, he or she must repay an amount equal to 200 percent of the amount of such funds; and if the candidate exceeded the spending limit by 5 percent or less, he or she must repay the amount by which the limit was exceeded, and if by more than 5 percent of the limit, he or she must repay an amount three times the amount of the excess expenditure but not more than the amount of payment received.

Section 507(f) allows a candidate to retain such funds for 60 days after an election for repayment of general election expenses and requires repayment of unexpended amounts remaining at the end of the 60 day period.

Section 507(g) imposes a three year limit on Commission notifications of repayments under this title.

Section 507(h) provides that repayments be deposited in the Senate Fund.

Criminal penalties

Section 507A would provide for criminal penalties that follow those provided for in the Presidential public funding provisions. Penalties would apply in the case of the knowing and willful acceptance of excess funds, spending of personal funds in excess of the personal spending limit, misuse of such funds, provision of false, fictitious or fraudulent information to the Commission, or acceptance of a kickback.

Judicial proceedings

Sections 508 and 509 give the Commission power to initiate civil proceedings to seek recovery of amounts owed by candidates and tracks existing judicial review provisions of 26 U.S.C. 9041 and 9042. An expedited review of commission determinations under the Act is provided.

Reports to Congress; regulations

Section 510 requires the Commission to submit reports after each election to Congress containing expenditures of candidates, the amount of public funds paid each candidate, the amounts repaid, and the balance in the Presidential and Senate campaign funds. Such reports are to be printed as Senate documents. The Commission is also authorized to prescribe rules and regulations (after submitting its proposals to the Senate for 30 days), to conduct examinations and investigations, and to require the keeping and submission of records and information it deems necessary to carry out its duties.

Authorization of appropriations and other funding matters

Section 511 authorizes the appropriation of such sums as may be necessary to the Commission to carry out its functions under this title.

Senate fund

Section 3 amends section 6096(a) of the Internal Revenue Code of 1986 by increasing the amount of the checkoff from $1 to $2 for an individual and from $2 to $4 for joint returns.

Broadcast rates

Section 4 amends Section 315(b)(1) of the Communications Act of 1934 to limit availability of "lowest unit rate" for televised broadcasts during the general election period to Senate candidates eligible for public funds under this title.

Reporting requirements

Section 5 amends section 434 of 2 U.S.C. It requires all Senate candidates to file with the Commission within a day of qualifying for the general election ballot a declaration of whether the candidate intends to make expenditures in excess of the limits and permits candidates 7 days to change that declaration. It also provides for two additional reports by Senate candidates who are not eligible for funds, the first within 24 hours after such candidate raises or spends amounts in excess of the spending limit, and a second within 24 hours after such candidate exceeds twice the limit. The Commission is required to notify the eligible candidate within 24 hours of the filing of such a report by an opponent and is authorized to make its own findings regarding the expenditures of candidates who are not eligible and give eligible candidates notice when such limits are exceeded.

Section 5 also requires that persons making independent expenditures report such spending within 24 hours after certain actions are taken to incur such expenditures in excess of $10,000 with regard to any one candidate and after each $5,000 expenditure increment. Such reports must be filed with the Commission and the Secretary of State of the state of the election involved and identify the affected candidate. The Commission is required to notify the candidate involved and is authorized to make its own findings regarding independent expenditures and give the affected candidate notice of its findings.

Section 5 provides that when two or more persons coordinate independent expenditures, notice is required when their combined spending exceeds the $10,000 threshold. It also specifies what activities and relationships constitute spending in coordination, consultation or concert.

Section 5 provides for reports by any political committee engaged in non-federal elections that also engages in activities which may influence a federal election and maintains separate accounts requiring an allocation of federal and non-federal financial activities.

Section 5 repeats the definition of election cycle that appears in Title V definitions.

Section 5 modifies various sections of section 434 to the effect that reports by candidates and authorized committees aggregate on an election cycle, rather than calendar year, basis.

Section 5 would change the definition of identification of an individual to include his or her permanent residence address instead of mailing address.

Section 5 requires that in reporting expenditures a committee must report the relevant information about a secondary payee in a situation where a primary payee providing personal or consulting services pays for goods and services for the candidate in excess of the reporting threshold of $200.

Section 5 also modifies the definition of contribution and expenditure so as to place of limit of one cent times the voting age population of a state on payments by state or local party committees for materials for volunteer activities and restricts the type of materials for which the money may be used.

Limits on contributions by multicandidate political committees and separate segregated funds

Section 6(a) amends Section 441a(a)(2) of 2 U.S.C. by limiting the amount of contributions a candidate for the House of Representatives may receive from multicandidate committees and separate segregated funds to $100,000 for the general and primary elections and an additional $25,000 in case of a runoff election. Senate candidates are limited to an amount to 30 percent of the primary election spending limit for the state provided for in title V of the Act and an additional 30 percent of the runoff spending limit provided for in said title for runoff elections. The amount any state committee may receive for federal election purposes from such sources would be limited to the greater of 2 cents times the state's voting age population of $25,000 in a two year election cycle.

Section 6(b) repeats from the Title V the formula for the primary and runoff election spending limits for referencing purposes and provides for indexing of both limits.

Section 6(c) limits the amount of contributions a Congressional campaign committee may receive during a two year election cycle from multicandidate committees and separate segregated funds to 30 percent of the amount that may be spent on behalf of Senate or House candidates under Section 441a(d) of 2 U.S.C.; the amount either national party committee may receive annually from such sources to an amount equal to 2 cents multiplied by the voting age population of the United States.

Intermediary or conduit

Section 7 would limit the earmarking of contributions and the bundling of contributions by political action committees, their officers or employees or the officers or employees of a connected organization or a political party committee to the amount of the contribution limit of the committee acting as conduit. A party committee would be permitted to act as a conduit in the context of a joint fundraising activity with candidates or other party committees.

Independent expenditures

Section 8 amends the definition of "independent expenditure" by specifying certain relationships and activities between candidates and committees or other persons that constitute coordination, consultation or concerted activity between the parties and do not constitute a relationship of sufficient independence to permit unlimited spending for or against a candidate. It also provides that once any such relationship or activity is established or undertaken, even

if before a person becomes a candidate, subsequent spending will continue to be considered to be in coordination, cooperation or in concert with such candidate.

Independent expenditure broadcast disclosure

Section 9 requires that any televised political advertisement sponosred by independent expenditures contain throughout the duration of the advertisement a clearly readable statement identifying the person paying for the advertisement and, if a committee, the name of any affiliated organization. Similar information is required for other forms of advertisements together with a statement that the cost of such statement was not subject to spending limits.

Personal loans

Section 10 prohibits the use of contributions to repay any loan by a candidate to himself or his campaign committee.

Referral to the Department of Justice

Section 11 would make referral to Justice by the Commission mandatory in case of criminal matters.

Extension of credit

Section 12 defines contribution to include an extension of credit for more than 60 days in an amount of more than $1,000.

Severability

Section 13 provides that other provisions of the Act shall survive should any one of them be held invalid.

Effective date

Section 14 makes the Act effective the first election held more than one year after its enactment, except provisions pertaining to the tax checkoff, bundling, the definition of independent expenditures and independent expenditure broadcast disclosure, all of which become effective upon enactment.

Rollcall Votes in Committee

In compliance with section 133 (b) and (d) of the Legislative Reorganization Act of 1946, as amended, the record of rollcall votes in the Committee on Rules and Administration, during its consideration of S. 2, is as follows:

1. Motion by Senator Stevens: To amend the bill, as amended, with an amendment in the nature of a substitute. Rejected: 3 Yeas; 8 Nays

YEAS—3	NAYS—8
Mr. Stevens	Mr. Pell
Mr. Hatfield	Mr. Byrd
Mr. Garn	Mr. Inouye
	Mr. DeConcini
	Mr. Moynihan
	Mr. Dodd
	Mr. Adams
	Mr. Ford

2. That S. 2, as amended, be reported. Approved: 8 Yeas; 3 Nays

YEAS—8	NAYS—3
Mr. Pell	Mr. Stevens
Mr. Byrd	Mr. Hatfield
Mr. Inouye	Mr. Garn
Mr. DeConcini	
Mr. Moynihan	
Mr. Dodd	
Mr. Adams	
Mr. Ford	

CHANGES IN EXISTING LAW

In compliance with paragraph 12 of rule XXVI of the Standing Rules of the Senate, changes in existing law made by the bill, S. 2, as reported by the Committee on Rules and Administration, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italic, and existing law in which no change is proposed is shown in roman):

FEDERAL ELECTION CAMPAIGN ACT OF 1971

[NOTE.—Changes in the Federal Election Campaign Act of 1971 are shown as that Act is reflected in chapter 14 of title 2, United States Code, for convenience of reference.]

CHAPTER 14—FEDERAL ELECTION CAMPAIGNS

§ 431. Definitions

When used in this Act:

* * * * * * *

(4) The term "political committee" means—

(A) any committee, club, association, or other group of persons which receives contributions aggregating in excess of $1,000 during a calendar year or which makes expenditures aggregating in excess of $1,000 during a calendar year; or

(B) any separate segregated fund established under the provisions of section 441b(b) of this title; or

(C) any local committee of a political party which receives contributions aggregating in excess of $5,000 during a calendar year, or makes payments exempted from the definition of contribution or expenditure as defined in paragraphs (8) and (9) of this section aggregating in excess of $5,000 during a calendar year, or makes contributions aggregating in excess of $1,000 during a calendar year or makes expenditures aggregating in excess of $1,000 during a calendar year.

For purposes of this section, the receipt of contributions or making of expenditures shall be determined by the Commission

on the basis of facts and circumstances, in whatever combination, demonstrating a purpose of influencing any election for Federal office, including, but not limited to, the representations made by any person soliciting funds about their intended uses; the identification by name of individuals who are candidates for Federal office, as defined in paragraph (2) of this section, or of any political party, in general public political advertising; and the proximity to any primary, run-off, or general election of general public political advertising designed or reasonably calculated to influence voter choice in that election.

* * * * * * *

(8)(A) The term "contribution" includes—

(i) any gift, subscription, loan, advance, or deposit of money or anything of value made by any person for the purpose of influencing any election for Federal office; **[**or**]**

(ii) the payment by any person of compensation for the personal services of another person which are rendered to a political committee without charge for any purpose**[**.**]** ; *or*

(iii) with respect to a candidate for the office of United States Senator and his authorized political committees, any extension of credit for goods or services relating to advertising on broadcasting stations, in newspapers or magazines, by direct mail (including direct mail fund solicitations) or other similar types of general public political advertising, if such extension of credit is—

(I) in an amount of more than $1,000; and

(II) for a period of more than 60 days after the date on which such goods or services are furnished, which date in the case of advertising by direct mail (including a direct mail solicitation) shall be the date of the mailing.

(B) The term "contribution" does not include—

(i) the value of services provided without compensation by any individual who volunteers on behalf of a candidate or political committee;

(ii) the use of real or personal property, including a church or community room used on a regular basis by members of a community for noncommercial purposes, and the cost of invitations, food, and beverages, voluntarily provided by an individual to any candidate or any political committee of a political party in rendering voluntary personal services on the individual's residential premises or in the church or community room for candidate-related or political party-related activities, to the extent that the cumulative value of such invitations, food, and beverages provided by such individual on behalf of any single candidate does not exceed $1,000 with respect to any single election, and on behalf of all political committees of a political party does not exceed $2,000 in any calendar year;

(iii) the sale of any food or beverage by a vendor for use in any candidate's campaign or for use by or on behalf of

any political committee of a political party at a charge less than the normal comparable charge, if such charge is at least equal to the cost of such food or beverage to the vendor, to the extent that the cumulative value of such activity by such vendor on behalf of any single candidate does not exceed $1,000 with respect to any single election, and on behalf of all political committees of a political party does not exceed $2,000 in any calendar year;

(iv) any unreimbursed payment for travel expenses made by any individual on behalf of any candidate or any political committee of a political party, to the extent that the cumulative value of such activity by such individual on behalf of any single candidate does not exceed $1,000 with respect to any single election, and on behalf of all political committees of a political party does not exceed $2,000 in any calendar year;

(v) *except for purposes of reporting and disclosing, pursuant to section 434, such amounts in excess of $200,* the payment by a State or local committee of a political party of the costs of preparation, display, or mailing or other distribution incurred by such committee with respect to a printed slate card or sample ballot, or other printed listing, of 3 or more candidates for any public office for which an election is held in the State in which such committee is organized, except that this clause shall not apply to any cost incurred by such committee with respect to a display of any such listing made on broadcasting stations, or in newspapers, magazines, or similar types of general political advertising;

(vi) any payment made or obligation incurred by a corporation or a labor organization which, under section 441b(b) of this title, would not constitute an expenditure by such corporation or labor organization;

(vii) any loan of money by a State bank, a federally chartered depository institution, or a depository institution the deposits or accounts of which are insured by the Federal Deposit Insurance Corporation, Federal Savings and Loan Insurance Corporation, or the National Credit Union Administration, other than any overdraft made with respect to a checking or savings account, made in accordance with applicable law and in the ordinary course of business, but such loan—

(I) shall be considered a loan by each endorser or guarantor, in that proportion of the unpaid balance that each endorser or guarantor bears to the total number of endorsers or guarantors;

(II) shall be made on a basis which assures repayment, evidenced by a written instrument, and subject to a due date or amortization schedule; and

(III) shall bear the usual and customary interest rate of the lending institution;

(viii) *except for purposes of reporting and disclosing, pursuant to section 434, such amounts in excess of $200,* any gift, subscription, loan, advance, or deposit of money or

anything of value to a national or a State committee of a political party specifically designated to defray any cost for construction or purchase of any office facility not acquired for the purpose of influencing the election of any candidate in any particular election for Federal office:

(ix) any legal or accounting services rendered to or on behalf of—

(I) any political committee of a political party if the person paying for such services is the regular employer of the person rendering such services and if such services are not attributable to activities which directly further the election of any designated candidate to Federal office; or

(II) an authorized committee of a candidate or any other political committee, if the person paying for such services is the regular employer of the individual rendering such services and if such services are solely for the purpose of ensuring compliance with this Act or chapter 95 or chapter 96 of title 26,

but amounts paid or incurred by the regular employer for such legal or accounting services shall be reported in accordance with section 434(b) of this title by the committee receiving such services;

(x) *except for purposes of reporting and disclosing, pursuant to section 434, such amounts in excess of $200,* the payment by a State or local committee of a political party of the costs of campaign materials (such as pins, bumper stickers, handbills, brochures, posters, party tabloids, and yard signs) used by such committee in connection with volunteer activities on behalf of nominees of such party. *Provided,* That—

(1) such payments are not for the costs of campaign materials or activities used in connection with any broadcasting, newspaper, magazine, billboard, direct mail, or similar type of general public communication or political advertising;

(2) such payments are made from contributions subject to the limitations and prohibitions of this Act; and

(3) such payments are not made from contributions designated to be spent on behalf of a particular candidate or particular candidates;

(xi) the payment by a candidate, for nomination or election to any public office (including State or local office). or authorized committee of a candidate, of the costs of campaign materials which include information on or reference to any other candidate and which are used in connection with volunteer activities (including pins, bumber stickers, handbills brouchers, posters, and yard signs, but not including the use of broadcasting, newspapers, magazines, billboards, direct mail, or similar types of general public communication or political advertising): *Provided,* That such payments are made from contributions subject to the limitations and prohibitions subject to the limitations and prohibitions of this Act:

(xii) *except for purposes of reporting and disclosing, pursuant to section 434, such amount in excess of $200.* the payment by a State or local committee of a political party of the costs of voter registration and get-out-the vote activities conducted by such committee on behalf of nominees of such party for President and Vice President: *Provided,* That

(1) such payments are not for the costs of campaign materials or activities used in connection with any broadcasting, newspaper, magazine, billboard, direct mail, or similar type of general public communication of political advertising:

(2) such payments are made from contributions subject to the limitations and prohibitions of this Act; and

(3) such payments are not made from contributions designated to be spent on behalf of a particular candidate or candidates;

(xiii) payments made by a candidate or the authorized committee of a candidate as a condition of ballot access and payments received by any political party committee as a condition of ballot access; and

(xiv) any honorarium (within the meaning of section 441i of this title).

(C) The exclusions provided in subparagraphs (v), (viii), (x), and (xii) of paragraph (B) shall not be exclusions from the definition of contributions for purposes of reporting contributions as required by section 434, and all such contributions shall be reported.

(9)(A) The term "expenditure" includes—

(i) any purchase, payment, distribution, loan, advance, deposit, or gift of money or anything of value, made by any person for the purpose of influencing any election for Federal office; and

(ii) a written contract, promise, or agreement to make an expenditure.

(B) The term "expenditure" does not include—

(i) any news story, commentary, or editorial distributed through the facilities of any broadcasting station, newspaper, magazine, or other periodical publication, unless such facilities are owned or controlled by any political party, political committee, or candidate;

(ii) nonpartisan activity designed to encourage individuals to vote or to register to vote;

(iii) any communication by any membership organization or corporation to its members, stockholders, or executive or administrative personnel, if such membership organization or corporation is not organized primarily for the purpose of influencing the nomination for election, or election, of any individual to Federal office, except that the costs incurred by a membership organization (including a labor organization) or by a corporation directly attributable to a communication expressly advocating the election or defeat of a clearly identified candidate (other than a communication primarily devoted to subjects other than the express

advocacy of the election or defeat of a clearly identified candidate), shall, if such costs exceed $2,000 for any election, be reported to the Commission in accordance with section 434(a)(4)(A)(i) of this title, and in accordance with section 434(a)(4)(A)(ii) of this title with respect to any general election.

(iv) *except for purposes of reporting and disclosing, pursuant to section 434, such amounts in excess of $200,* the payment by a State or local committee of a political party of the costs of preparation, display, or mailing or other distribution incurred by such committee with respect to a printed slate card or sample ballot, or other printed listing, of 3 or more candidates for any public office for which an election is held in the State in which such committee is organized, except that this clause shall not apply to costs incurred by such committee with respect to a display of any such listing made on broadcasting stations, or in newspapers, magazines, or similar types of general public political advertising;

(v) any payment made or obligation incurred by a corporation or a labor organization which, under section 441b(b) of this title, would not constitute an expenditure by such corporation or labor organization;

(vi) *except for purposes of reporting and disclosing, pursuant to section 434, such amounts in excess of $200,* any costs incurred by an authorized committee or candidate in connection with the solicitation of contributions on behalf of such candidate, except that this clause shall not apply with respect to costs incurred by an authorized committee of a candidate in excess of an amount equal to 20 percent of the expenditure limitation applicable to such candidate under section 441a(b), but all such costs shall be reported in accordance with section 434(b);

(vii) the payment of compensation for legal or accounting services—

(I) rendered to or on behalf of any political committee of a political party if the person paying for such services is the regular employer of the individual rendering such services, and if such services are not attributable to activities which directly further the election of any designated candidate to Federal office; or

(II) rendered to or on behalf of a candidate or political committee if the person paying for such services is the regular employer of the individual rendering such services, and if such services are solely for the purpose of ensuring compliance with this Act or chapter 95 or chapter 96 of title 26,

but amounts paid or incurred by the regular employer for such legal or accounting services shall be reported in accordance with section 434(b) by the committee receiving such services;

(viii) *except for purposes of reporting and disclosing, pursuant to section 434, such amounts in excess of $200,* the payment by a State or local committee of a political party

of the costs of campaign materials (such as pins, bumper stickers, handbills, brochures, posters, party tabloids, and yard signs) used by such committee in connection with volunteer activities on behalf of nominees of such party. *Provided,* That—

(1) such payments are not for the costs of campaign materials or activities used in connection with any broadcasting, newspaper, magazine, billboard, direct mail, or similar type of general public communication or political advertising;

(2) such payments are made from contributions subject to the limitations and prohibitions of this Act; and

(3) such payments are not made from contributions designated to be spent on behalf of a particular candidate or particular candidates;

(ix) *except for purposes of reporting and disclosing, pursuant to section 434, such amounts in excess of $200,* the payment by a State or local committee of a political party of the costs of voter registration and get-out-the-vote activities conducted by such committee on behalf of nominees of such party for President and Vice President: *Provided,* That—

(1) such payments are not for the costs of campaign materials or activities used in connection with any broadcasting, newspaper, magazine, billboard, direct mail, or similar type of general public communication or political advertising;

(2) such payments are made from contributions subject to the limitations and prohibitions of this Act; and

(3) such payments are not made from contributions designated to be spent on behalf of a particular candidate or candidates; and

(x) payments received by a political party committee as a condition of ballot access which are transferred to another political party committee or the appropriate State official.

(C) The exclusions provided in subparagraphs (iv), (vi), (viii), and (ix) of paragraph (b) shall not be exclusions from the definition of expenditures for purposes of reporting expenditures as required by this Act, and all such expenditures shall be reported.

* * * * * * *

(13) The term "identification" means—

(A) in the case of any individual, the name, the [mailing address] *permanent residence address,* and the occupation of such individual, as well as the name of his or her employer; and

(B) in the case of any other person, the full name and address of such person.

* * * * * * *

(17) The term "independent expenditure" means an expenditure by a person expressly advocating the election or defeat of

a clearly identified candidate which is made without cooperation or consultation with any candidate, or any authorized committee or agent of such candidate, and which is not made in concert with, or at the request or suggestion of, any candidate, or any authorized committee or agent of such candidate. *An expenditure shall constitute an expenditure in coordination, consultation, or concert with a candidate and shall not constitute an 'independent expenditure' where—*

(A) there is any arrangement, coordination, or direction with respect to the expenditure between the candidate or the candidate's agent and the person (including any officer, director, employee or agent of such person) making the expenditure;

(B) in the same election cycle, the person making the expenditure (including any officer, director, employee or agent of such person) is or has been—

(i) authorized to raise or expend funds on behalf of the candidate or the candidate's authorized committees,

(ii) serving as an officer of the candidate's authorized committees, or

(iii) receiving any form of compensation or reimbursement from the candidate, the candidate's authorized committees, or the candidate's agent;

(C) the person making the expenditure (including any officer, director, employee or agent of such person) has communicated with, advised, or counseled the candidate or the candidate's agents at any time on the candidate's plans, projects, or needs relating to the candidate's pursuit of nomination for election, or election to Federal office, in the same election cycle, including any advice relating to the candidate's decision to seek Federal office;

(D) the person making the expenditure retains the professional services of any individual or other person also providing those services to the candidate in connection with the candidate's pursuit of nomination for election, or election to Federal office, in the same election cycle, including any services relating to the candidate's decision to seek Federal office;

(E) the person making the expenditure (including any officer, employee or agent of such person) has communicated or consulted at any time during the same election cycle about the candidate's plans, projects, or needs relating to the candidate's pursuit of election to Federal office, with: (i) any officer, director, employee or agent of a party committee that has made or intends to make expenditures or contributions, pursuant to subsections (a), (d), or (h) of section 315 in connection with the candidate's campaign; or (ii) any person whose professional services have been retained by a political party committee that has made or intends to make expenditures or contributions pursuant to subsections (a), (d), or (h) of section 315 in connection with the candidate's campaign; or

(F) the expenditure is based on information provided to the person making the expenditure directly or indirectly by the candidate or the candidate's agents about the candidate's plans, projects, or needs, provided that the candidate or the candidate's agent is aware that the other person has made or is planning to make expenditures expressly advocating the candidate's election.

* * * * * * *

(20) The term 'election cycle' means—

(A) in the case of a candidate or the authorized committees of a candidate, the term beginning on the day after the date of the last previous general election for such office or seat which such candidate seeks and ending on the day after the date of the next election; or

(B) for all other persons, the term beginning on the first day after the date of the last general election and ending on the date of the next election.

* * * * * * *

§ 434. Reporting requirements

* * * * * * *

(b) CONTENTS OF REPORTS.—Each report under this section shall disclose—

(1) the amount of cash on hand at the beginning of the reporting period;

(2) **[**for the reporting and the calendar year,**]** *for the reporting period and calendar year in the case of committees other than authorized committees of a candidate, and for the reporting period and election cycle in the case of authorized committees of candidates,* the total amount of all receipts, and the total amount of all receipts in the following categories;

(A) contributions from persons other than political committees;

(B) for an authorized committee, contributions from the candidate;

(C) contributions from political party committees;

(D) contributions from other political committees;

(E) for an authorized committee, transfers from other authorized committees of the same candidate;

(F) transfers from affiliated committees and, where the reporting committee is a political party committee, transfers from other political party committees, regardless of whether such committees are affiliated;

(G) for an authorized committee, loans made by or guaranteed by the candidate;

(H) all other loans;

(I) rebates, refunds, and other offsets to operating expenditures;

(J) dividends, interest, and other forms of receipts; and

(K) for an authorized committee of a candidate for the office of President, Federal funds received under chapter 95 and chapter 96 of title 26;

(3) the identification of each--

(A) person (other than a political committee) who makes a contribution to the reporting committee during the reporting period, whose contribution or contributions have an aggregate amout or value in excess of $200 within the calendar year, *in the case of committees other than authorized committees or in excess of $200 within the election cycle in the case of authorized committees,* or in any lesser amount if the reporting committee should so elect, together with the date and amount of any such contribution;

(B) political committee which makes a contribution to the reporting committee during the reporting period, together with the date and amount of any such contribution;

(C) authorized committee which makes a transfer to the reporting committee;

(D) affiliated committee which makes a transfer to the reporting committee during the reporting period and, where the reporting committee is a political party committee, each transfer of funds to the reporting committee from another political party committee, regardless of whether such committees are affiliated, together with the date and amount of such transfer;

(E) person who makes a loan to the reporting committee during the reporting period, together with the identification of any endorser or guarantor of such loan, and date and amount of value of such loan;

(F) person who provides a rebate, refund, or other offset to operating expenditures to the reporting committee in an aggregate amount or value in excess of $200 within the calendar year, *in the case of committees other than authorized committees or in excess of $200 within the election cycle in the case of authorized committees,* together with the date and amount of such reciept; and

(G) person who provides any dividend, interest, or other receipt to the reporting committee in an aggregate value or amount in excess of $200 within the calendar year, *in the case of committees other than authorized committees or in excess of $200 within the election cycle in the case of authorized committees,* together with the date and amount of any such receipt;

(4) [for the reporting period and the calendar year,] *for the reporting period and calendar year in the case of committees other than authorized committees of a candidate, and for the reporting period and election cycle in the case of authorized committees of candidates,* the total amount of all disbursements, and all disbursements in the following categories:

(A) expenditures made to meet candidate or committee operating expenses;

(B) for authorized committees, transfers to other committees authorized by the same candidate;

(C) transfers to affiliated committees and, where the reporting committee is a political party committee, transfers to other political party committees, regardless of whether they are affiliated;

(D) for an authorized committee, repayment of loans made by or guaranteed by the candidate;

(E) repayment of all other loans;

(F) contribution refunds and other offsets to contributions;

(G) for an authorized committee, any other disbursements;

(H) for any political committee other than an authorized committee—

(i) contributions made to other political committees;

(ii) loans made by the reporting committees;

(iii) independent expenditures;

(iv) expenditures made under section 441a(d) of this title; and

(v) any other disbursements; and

(I) for an authorized committee of a candidate for the office of President, disbursements not subject to the limitation of section 441a(b);

(5) the name and address of each—

(A) person to whom an expenditure in an aggregate amount or value in excess of $200 within the calendar year, in the case of committees other than authorized committees or in excess of $200 within the election cycle in the case of authorized committees, is made by the reporting committee to meet a candidate or committee operating expense, together with the date, amount, and purpose of such operating expenditure, except that if a person to whom an expenditure is made is merely providing personal or consulting services and in turn making expenditures to other persons who provide goods or services to the candidate or his authorized committees, the name and address of such other person, together with the date, amount and purpose of such expenditure shall also be disclosed;

(B) authorized committee to which a transfer is made by the reporting committee;

(C) affiliated committee to which a transfer is made by the reporting committee during the reporting period and, where the reporting committee is a political party committee, each transfer of funds by the reporting committee to another political party committee, regardless of whether such committees are affiliated, together with the date and amount of such transfers;

(D) person who receives a loan repayment from the reporting committee during the reporting period, together with the date and amount of such loan repayment; and

(E) person who receives a contribution refund or other offset to contributions from the reporting committee where such contribution was reported under paragraph (3)(A) of this subsection, together with the date and amount of such disbursement;

(6)(A) for an authorized committee, the name and address of each person who has received any disbursement not disclosed under paragraph (5) in an aggregate amount or value in excess

of $200 within the [calendar year] *election cycle*, together with the date and amount of any such disbursement;

(B) for any other political committee, the name and address of each—

(i) political committee which has received a contribution from the reporting committee during the reporting period, together with the date and amount of any such contribution;

(ii) person who has received a loan from the reporting committee during the reporting period, together with the date and amount of such loan;

(iii) person who receives any disbursement during the reporting period in an aggregate amount or value in excess of $200 within the calendar year in connection with an independent expenditure by the reporting committee, together with the date, amount, and purpose of any such independent expenditure and a statement which indicates whether such independent expenditure is in support of, or in opposition to, a candidate, and a certification, under penalty of perjury, whether such independent expenditure is made in cooperation, consultation, or concern, with, or at the request or suggestion of, any candidate or any authorized committee or agent of such committee;

(iv) person who receives any expenditure from the reporting committee during the reporting period in connection with an expenditure under section 44a(d) of this title, together with the date, amount, and purpose of any such expenditure as well as the name of, and office sought by, the candidate on whose behalf the expenditure is made; and

(v) person who has received any disbursement not otherwise disclosed in this paragraph or paragraph (5) in an aggregate amount or value in excess of $200 within the calendar year from the reporting committee within the reporting period, together with the date, amount, and purpose of any such disbursement;

* * * * * * *

(d)(1) Not later than the day after the date on which a candidate for the United States Senate qualifies for the ballot for a general election, as such term is defined in section 501(8), each such candidate in such election shall file with the Commission a declaration of whether or not such candidate intends to make expenditures for such election, as determined under section 503(b).

(2) Any declaration filed pursuant to paragraph (1) may be amended or changed at any time within 7 days after the filing of such declaration. Such amended declaration may not be amended or changed further.

(e)(1) Any candidate for United States Senator who qualifies for the ballot for a general election, as such term is defined in section 501(8)—

(A) who is not eligible to receive payments under section 502, and

(B) who either raises aggregate contributions or made aggregate expenditures for such election which exceed the amount of the limitation determined under section 503(b) for such Senate election.

shall file a report with the Commission within 24 hours after such contributions have been raised or such expenditures have been made or within 24 hours after the date of qualification for the general election ballot, whichever is later, setting forth the candidate's total contributions and total expenditures for such election. If such total is less than two times the limit, such candidate thereafter shall file a report with the Commission within 24 hours after either raising aggregate contributions or making aggregate expenditures for such election which exceed twice the amount of the limitation determined under section 503(b), setting forth the candidate's total contributions and total expenditures for such election.

(2) The Commission, within 24 hours after such report has been filed, shall notify each candidate in the election involved who is eligible to receive payments pursuant to the provisions of this title under section 504, about each such report, and shall certify, pursuant to the provisions of subsection (i) such eligibility to the Secretary of the Treasury for payment of the amount to which such candidate is entitled.

(3) Notwithstanding the reporting requirement established in this subsection, the Commission may make its own determination that a candidate in a general election, as such term is defined in section 501(8), who is not eligible to receive payments under section 504, has raised aggregate contributions or made aggregate expenditures for such election which exceed the amount of the limitation determined under section 503(b) for such election or exceed double such amount. The Commission, within 24 hours after making such determination, shall notify each candidate in the general election involved who is eligible to receive payments under section 504 about each such determination, and shall certify, pursuant to the provisions of subsection (i) such eligibility to the Secretary of the Treasury for payment of the amount to which such candidate is entitled.

(f)(1) All independent expenditures, if any, (including those described in subsection (b)(6)(B)(iii)) made by any person after the date of the last Federal election with regard to a general election, as such term is defined in section 501(8), and all obligations to make such expenditures incurred by any person during such period, if any, shall be reported by such person to the Commission as provided in paragraph (2), if such expenditure or obligation is described in such paragraph.

(2) Independent expenditures by any person as referred to in paragraph (1) shall be reported within 24 hours after the aggregate amount of such expenditures incurred or obligated first exceeds $10,000. Thereafter, independent expenditures referred to in such paragraph made by the same person in the same election shall be reported, within 24 hours after, each time the aggregate amount of such expenditures incurred or obligated, not yet reported under this subparagraph, exceeds $5,000.

(3) Each report under this subsection shall be filed with the Commission and Secretary of State for the State of the election involved and shall contain (A) the information required by subsection

(b)(6)(B)(iii) of this section, and (B) a statement filed under penalty of perjury by the person making the independent expenditures, or by the person incurring the obligation to make such expenditures, as the case may be, that identifies the candidate whom the independent expenditures are actually intended to help elect or defeat. If any such independent expenditures are made during the general election cycle, and if such candidate is eligible to receive payments pursuant to title V of this Act, the Commission shall, within 24 hours after such report is made, notify such candidate in the election involved about each such report, and shall certify such eligibilty to the Secretary of the Treasury for payment of the amount to which such candidate is entitled.

(4)(A) Notwithstanding the reporting requirements established in this subsection, the Commission may make its own determination that a person has made independent expenditures, or has incurred an obligation to make such expenditures, as the case may be, with regard to a general election, as defined in section 501(8), that in the aggregate total more than the applicable amount specified in paragraph (2).

(B) The Commission shall, within 24 hours after such determination is made, notify each candidate in the election involved who is eligible to receive payments under section 504 about each determination under subparagraph (A), and shall certify, pursuant to the provisions of subsection (i), such eligibility to the Secretary of the Treasury for payment in full of the amount to which such candidate is entitled.

(g)(1) When two or more persons make an expenditure or expenditures in coordination, consultation, or concert (as described in paragraph (2) or otherwise) for the purpose of promoting the election or defeat of a clearly identified candidate, each such person shall report to the Commission, under subsecton (f), the amount of such expenditure or expenditures made by such person in coordination, or concert with such other person or persons when the total amount of all expenditures made by such persons in coordination, consultation, or concert with each other exceeds the applicable amount provided in such subsection.

(2) An expenditure by one person shall constitute an expenditure in coordination, consultation, or concert with another person where—

(A) there is any arrangement, coordination, or direction with respect to the expenditure between such persons making the expenditures, including any officer, director, employee or agent of such person;

(B) in the same two-year election cycle, one of the persons making the expenditures (including any officer, director, employee or agent of such person) is or has been, with respect to such expenditures—

(i) authorized by such other person to raise or expend funds on behalf of such other person; or

(ii) receiving any form of compensation or reimbursement from such other person or an agent of such other person;

(C) one of the persons making expenditures (including any officer, director, employee or agent of such person) has communi-

cated with, advised, or counseled such other person in connection with such expenditure; or

(D) one of the persons making expenditures and such other person making expenditures each retain the professional services of the same individual or person in connection with such expenditures.

(h)(1) Every political committee, as defined in section 301(4), active in non-Federal elections and maintaining separate accounts for this purpose shall file with the Commission reports of funds received into and disbursements made from such accounts for activities which may influence an election to any Federal office. For purposes of this section, activities which may influence an election to any Federal office include, but are not limited to—

(A) voter registration and get-out-the-vote drives directed to the general public in connection with any election in which Federal candidates appear on the ballot;

(B) general public political advertising which includes references, however incidental, to cleary identified Federal as well as non-Federal candidates for public office; or which does not clearly identify Federal candidates but urges support for or opposition to all the candidates of a political party or other candidates in a classification or context which includes Federal candidates; and

(C) any other activities which require an allocation of costs between a political committee's Federal and non-Federal accounts reflecting the impact on Federal elections in accordance with regulations prescribed or Advisory Opinions rendered by the Commission.

(2) Reports required to be filed by this subsection shall be filed for the same time-periods required for political committees under section 304(a), and shall include:

(A) a separate statement, for each of the activities in connection with which a report is required under paragraph (1), of the aggregate total of disbursements from the non-Federal accounts; and

(B) supporting schedules, providing an identification of each donor together with the amount and date of each donation with regard to those receipts of the non-Federal account which comprise disbursements reported under subparagraph (A), provided, however, that such schedules are required only for donations from any one source aggregating in excess of $200 in any calendar year.

(3) Reports required to be filed by this subsection need not include donations made to or on behalf of non-Federal candidates or political organizations in accordance with the financing and reporting requirements of State laws, or other disbursements from the non-Federal accounts in support of exclusively non-Federal election activities, provided that such donations or disbursements are governed solely by such State laws and not subject to paragraph (1) of this subsection.

(i) The certification required by this section shall be made by the Commission on the basis of reports filed with such Commission in accordance with the provisions of this Act, or on the basis of such

Commission's own investigation or determination, notwithstanding the provisions of section 505(a).

* * * * * * *

§ 437g. Enforcement

(a) Administrative and judicial practice and procedure.

* * * * * * *

(5)(A) If the Commission believes that a violation of this Act or of chapter 95 or chapter 96 of title 26 has been committed, a conciliation agreement entered into by the Commission under paragraph (4)(A) may include a requirement that the person involved in such conciliation agreement shall pay a civil penalty which does not exceed the greater of $5,000 or an amount equal to any contribution or expenditure involved in such violation.

(B) If the Commission believes that a knowing and willful violation of this Act or of chapter 95 or chapter 96 of title 26 has been committed, a conciliation agreement entered into by the Commission under paragraph (4)(A) may require that the person involved in such conciliation agreement shall pay a civil penalty which does not exceed the greater of $10,000 or an amount equal to 200 percent of any contribution or expenditure involved in such violation.

(C) If the Commission by an affirmative vote of 4 of its members, determines that there is probable cause to believe that a knowing and willful violation of this Act which is subject to subsection (d) of this section, or a knowing and willful violation of chapter 96 or chapter 96 of title 26, has occurred or is about to occur, it [may refer] *shall refer* such apparent violation to the Attorney General of the United States without regard to any limitations set forth in paragraph (4)(A).

(D) In any case in which a person has entered into a conciliation agreement with the Commission under paragraph (4)(A), the Commission may institute a civil action for relief under paragraph (6)(A) if it believes that the person has violated any provision of such conciliation agreement. For the Commission to obtain relief in any civil action, the Commission need only establish that the person has violated, in whole or in part, any requirement of such conciliation agreement.

* * * * * * *

§ 441a. Limitations on contributions and expenditures

(a) *Dollar limits on contributions.*

(1) No person shall make contributions—

(A) to any candidate and his authorized political committees with respect to any election for Federal office which, in the aggregate, exceed $1,000;

(B) to the political committees established and maintained by a national political party, which are not the authorized political committees of any candidate, in any calendar year which, in the aggregate, exceed $20,000; or

(C) to any other political committee in any calendar year which, in the aggregate, exceed $5,000.

(2) No multicandidate political committee shall make contributions—

(A) to any candidate and his authorized political committees with respect to any election for Federal office which, in the aggregate, exceed $5,000;

(B) to the political committees established and maintained by a national political party, which are not the authorized political committees of any candidate, in any calendar year, which, in the aggregate, exceed $15,000; [or]

(C) to any other political committee in any calendar year which, in the aggregate, exceed $5,000 [.];

(D) to any candidate for the office of Member of, or Delegate or Resident Commissioner to, the House of Representatives and the authorized political committees of such candidate with respect to—

(i) a general or special election for the office of Representative in, or Delegate or Resident Commissioner to, the Congress (including any primary election, convention, or caucus relating to such general or special election) which exceed $100,000 ($125,000 if at least two candidates qualify for the ballot in the general or special election involved and at least two candidates qualify for the ballot in a primary election relating to such general or special election), when added to the total of contributions previously made by multicandidate political committees and separate segregated funds, other than multicandidate committees of a political party, to such candidate and his authorized political committees with respect to such general or special election (including any primary election, convention, or caucus relating to such general or special election); or

(ii) a runoff election for the office of Representative in, or Delegate or Resident Commissioner to, the Congress which exceed $25,000 when added to the total of contributions previously made by multicandidate political committees and separate segregated funds, other than multicandidate committees of a political party, to such a candidate and his authorized political committees with respect to such runoff election;

(E) to any candidate for the office of Senator and the authorized political committees of such candidate with respect to—

(i) a general or special election for such office (including any primary election, convention, or caucus relating to such general or special election) which, when added to the total of contributions previously made by multicandidate political committees and separate segregated funds, other than multicandidate committees of a political party, to such candidate and his authorized political committees with respect to such general or special election (including any primary election, convention, or caucus relating to such general or special

election) exceeds an amount equal to 30 percent of the amount provided in section 315(i); or

(ii) a runoff election for the office of United States Senator which exceeds, when added to the total of contributions previously made by multicandidate political committees and separate segregated funds, other than multicandidate committees of a political party, to such candidate and his authorized political committees with respect to such runoff election, an amount equal to 30 percent of the limitation on expenditures provided in section 315(j), for runoff elections; or

(F) to any State committee of a political party, including any subordinate committee of a State committee, which, when added to the total of contributions previously made by multicandidate political committees and separate segregated funds, other than multicandidate committees of a political party, to such State committee exceeds an amount equal to—

(i) 2 cents multiplied by the voting age population of the State of such State committee, or

(ii) $25,000,

whichever is greater. The limitation of this subparagraph shall apply separately with respect to each two-year Federal election cycle, covering a period from the day following the date of the last Federal general election held in that State through the date of the next regularly scheduled Federal general election.

* * * * * * *

[(8) For purposes of the limitations imposed by this section, all contributions made by a person, either directly or indirectly, on behalf of a particular candidate, including contributions which are in any way earmarked or otherwise directed through an intermediary or conduit to such candidate, shall be treated as contributions from such person to such candidate. The intermediary or conduit shall report the original source and the intended recipient of such contribution to the Commission and to the intended recipient.**]**

(8) For purposes of this subsection—

(A) contributions made by a person, either directly or indirectly, to or on behalf of a particular candidate, including contributions which are in any way earmarked or otherwise directed through an intermediary or conduit to such candidate, shall be treated as contributions from such person to such candidate;

(B) contributions made by a person either directly or indirectly, to or on behalf of a particular candidate, through an intermediary or conduit, including all contributions delivered or arranged to be delivered by such intermediary or conduit, shall also be treated as contributions from the intermediary or conduit, if—

(i) the contributions made through the intermediary or conduit are in the form of a check or other negotia-

ble instrument made payable to the conduit or intermediary rather than the intended recipient; or

(ii) the conduit or intermediary is a political committee, other than an authorized committee of a candidate, within the meaning of section 301(4), or an officer, employee or other agent of such a political committee, or an officer, employee or other agent of a connected organization, within the meaning of section 301(7), acting in its behalf;

(C) the limitations imposed by this paragraph shall not apply to—

(i) bona fide joint fundraising efforts conducted solely for the purpose of sponsorship of a fundraising reception, dinner, or other event in accordance with rules and regulations prescribed by the Commission by (I) two or more candidates, (II) two or more national, State, or local committees of a political party within the meaning of section 301(4) acting on their own behalf, or (III) a special committee formed by (a) two or more candidates or (b) one or more candidates and one or more national, State, or local committees of a political party acting on their own behalf;

(ii) fundraising efforts for the benefit of a candidate which are conducted by another candidate within the meaning of section 301(2).

In all cases where contributions are made by a person either directly or indirectly to or on behalf of a particular candidate through an intermediary or conduit, the intermediary or conduit shall report the original source and the intended recipient of such contribution to the Commission and to the intended recipient.

(9) For purposes of the limitations imposed by this section, no contributions may be received by a candidate or the candidate's authorized committees for the purpose of repaying any loan by the candidate to the candidate or to the candidate's authorized committees.

* * * * * * *

(c) *Increases on limits based on increases in price index.*

(1) At the beginning of each calendar year (commencing in 1976), as there become available necessary data from the Bureau of Labor Statistics of the Department of Labor, the Secretary of Labor shall certify to the Commission and publish in the Federal Register the percent difference between the price index for the 12 months preceding the beginning of such calendar year and the price index for the base period. Each limitation established by [subsection (b) of this section and subsection (d)] *subsections (b), (d), (i), and (j)* of this section shall be increased by such percent difference. Each amount so increased shall be the amount in effect for such calendar year.

(2) For purposes of paragraph (1)—

(A) the term "price index" means the average over a calendar year of the Consumer Price Index (all items—United

States city average) published monthly by the Bureau of Labor Statistics; and

(B) the term "base period" means the calendar year of 1974 *for subsections (b) and (d) and the term "base period" means the calendar year of the first election after the date of enactment of the Senatorial Election Campaign Act of 1987, for subsections (i) and (j).*

(d) *Expenditures by national committee, State committee, or subordinate committee of State committee in connection with general election campaign of candidates for Federal office.*

(1) Notwithstanding any other provision of law with respect to limitations on expenditures or limitations on contributions, the national committee of a political party and a State committee of a political party, including any subordinate committee of a State committee, may make expenditures in connection with the general election campaign of candidates for Federal office, subject to the limitations contained in paragraphs [(2) and (3)] *(2), (3), (4), and (5)* of this subsection.

(2) The national committee of a political party may not make any expenditure in connection with the general election campaign of any candidate for President of the United States who is affiliated with such party which exceeds an amount equal to 2 cents multiplied by the voting age population of the United States (as certified under subsection (e) of this section). Any expenditure under this paragraph shall be in addition to any expenditure by a national committee of a political party serving as the principal campaign committee of a candidate for the office of President of the United States.

(3) The national committee of a political party, or a State committee of a political party, including any subordinate committee of a State committee, may not make any expenditure in connection with the general election campaign of a candidate for Federal office in a State who is affiliated with such party which exceeds—

(A) in the case of a candidate for election to the office of Senator, or of Representative from a State which is entitled to only one Representative, the greater of—

(i) 2 cents multiplied by the voting age population of the State (as certified under subsection (e) of this section); or

(ii) $20,000; and

(B) in the case of a candidate for election to the office of Representative, Delegate, or Resident Commissioner of any other State, $10,000.

(4) No congressional campaign committee may accept, during any two-year election cycle, contributions from multicandidate political committees and separate segregated funds which, in the aggregate, exceed 30 percent of the total expenditures which may be made during such election cycle by that committee on behalf of candidates for Senator, Representative, Delegate, or Resident Commissioner pursuant to the provisions of paragraph (3).

(5) No national committee of a political party may accept contributions from multicandidate political committees and sepa-

rate segregated funds, during any two-year election cycle, which in the aggregate, equal an amount in excess of an amount equal to 2 cents multiplied by the voting age population of the United States.

(6) The limitations contained in paragraphs (2) and (3) shall apply to any expenditure through general public political advertising, whenever made, which clearly identifies by name an individual who is, or is seeking nomination to be, a candidate in the general election for Federal office of President, Senator or Representative; provided that this paragraph shall not apply to direct mail communications designed primarily for fund raising purposes which make only incidental reference to any one or more Federal candidates.".

* * * * * * *

(i) For purposes of subsection (a)(2)(E)(i), such limitation shall be an amount equal to 67 percent of the aggregate of $400,000, plus—

(1) in States having a voting age population of 4 million or less, 30 cents multiplied by the voting age population; or

(2) in States having a voting age population over 4 million, 30 cents multiplied by 4 million plus 25 cents multiplied by the voting age population over 4 million;

except that such amount shall not be less than $950,000, nor more than $5,500,000.

(j) For purposes of subsection (a)(2)(E)(ii), such limitation shall be an amount equal to 20 percent of the aggregate of $400,000, plus—

(1) in States having a voting age population of 4 million or less, 30 cents multiplied by the voting age population; or

(2) in States having a voting age population over 4 million, 30 cents multiplied by 4 million plus 25 cents multiplied by the voting age population over 4 million;

except that such amount shall not be less than $950,000, nor more than $5,500,000.

* * * * * * *

§ 441d. Publication and distribution of statements and solicitations; charge for newspaper or magazine space

(a) Whenever any person makes an expenditure for the purpose of financing communications expressly advocating the election or defeat of a clearly identified candidate, or solicits any contribution through any broadcasting station, newspaper, magazine, outdoor advertising facility, direct mailing, or any other type of general public political advertising, such communication—

(1) if paid for and authorized by a candidate, an authorized political committee of a candidate, or its agents, shall clearly state that the communication has been paid for by such authorized political committee, or

(2) if paid for by other persons but authorized by a candidate, an authorized political committee of a candidate, or its agents, shall clearly state that the communication is paid for by such other persons and authorized by such authorized political committee;

(3) if not authorized by a candidate, an authorized political committee of a candidate, or its agents, shall clearly state the name of the person who paid for the communication and state that the communication is not authorized by any candidate or candidate's committee[.], *except that whenever any person makes an independent expenditure through (A) a broadcast communication on any television station, the broadcast communication shall include a statement clearly readable to the viewer that appears continuously during the entire length of such communication setting forth the name of such person and in the case of a political committee, the name of any connected or affiliated organization, or (B) a newspaper, magazine, outdoor advertising facility, direct mailing or other type of general public political advertising, the communication shall include, in addition to the other information required by this subsection, the following sentence: 'The cost of presenting this communication is not subject to any campaign contribution limits.', and a statement setting forth the name of the person who paid for the communication and, in the case of a political committee, the name of any connected or affiliated organization and the name of the president or treasurer of such organization.*

(b) No person who sells space in a newspaper or magazine to a candidate or to the agent of a candidate, for use in connection with such candidate's campaign, may charge any amount for such space which exceeds the amount charged for comparable use of such space for other puposes.

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(The following is a new Title V to the Federal Election Campaign Act:)

"TITLE V—SPENDING LIMITS AND PUBLIC FINANCING FOR SENATE ELECTION CAMPAIGNS

"DEFINITIONS

"SEC. 501. For purposes of this title—

"(1) unless otherwise provided in this title the definitions set forth in section 301 of this Act apply to this title;

"(2) the term 'authorized committee' means, with respect to any candidate for election to the office of United States Senator, any political committee which is authorized in writing by such candidate to accept contributions or make expenditures on behalf of such candidate to further the election of such candidate;

"(3) the term 'candidate' means an individual who is seeking nomination for election, or election to the office of United States Senator and such individual shall be deemed to seek nomination for election, or election, if such individual meets the requirements of subparagraph (A) or (B) of section 301(2);

"(4) the term 'contribution' includes a payment described in section 301(8)(B)(x), made by a State or local committee of a political party, if—

"(A) the sum of the amount of such payment and the total amount of all previous such payments by such com-

mittee during the same election cycle exceeds the amount determined by multiplying one cent times the voting age population of the State in which the election is held; or

"(B) if any portion of such payment is used—

"(i) for the purpose of purchasing, leasing, or otherwise procuring, or procuring the use of, any telephone, computer, computer program, or mass mailing equipment; or

"(ii) for any purpose other than the purchase of materials described in section 301(8)(B)(x) which are to be used by individuals in the performance of services described in section 301(8)(B)(i) or are to be distributed by individuals providing such services;

"(5) the term 'election cycle' means—

"(A) in the case of a candidate or the authorized committee of a candidate, the term beginning on the day after the date of the last previous general election for such office or seat which such candidate seeks and ending on the date of the next election; or

"(B) for all other persons, such term shall begin on the first day following the date of the last general election and ending on the date of the next election.

"(6) the term 'eligible candidate' means a candidate who is eligible under section 502 to receive payments under this title;

"(7) the term 'expenditure' includes a payment described in section 301(9)(B)(viii), by a State or local committee of a political party if—

"(A) the sum of the amount of such payment and the total amount of all previous such payments by such committee during the same election cycle exceeds the amount determined by multiplying one cent times the voting age population of the State in which the election is held; or

"(B) if any portion of such payment is used—

"(i) for the purpose of purchasing, leasing, or otherwise procuring, or procuring the use of, any telephone, computer, computer program, or mass mailing equipment; or

"(ii) for any purpose other than the purchase of materials described in section 301(9)(B)(viii) which are to be used by individuals in the performance of services described in section 301(8)(B)(i) or are to be distributed by individuals providing such services;

"(8) the term 'general election' means any election which will directly result in the election of a person to the office of United States Senator, but does not include an open primary election;

"(9) the term 'general election period' means the period beginning on the day after the date on which the candidate qualifies for the general election ballot under the law of the State involved and ending on the date of such election or the date on which the candidate withdraws from the campaign or otherwise ceases actively to seek election, whichever occurs first;

"(10) the term 'immediate family' means a candidate's spouse, and any child, stepchild, parent, grandparent, brother, half-brother, sister or half-sister, of the candidate and the spouse of

any such person and any child, stepchild, parent, grandparent, brother, half-brother, sister or half-sister of the candidate's spouse and the spouse of any such person.

"(11) the term 'major party' means 'major party' as defined in section 9002(6) of the Internal Revenue Code of 1986, the Presidential Election Campaign Fund Act, provided that a candidate in a general election held by a State to elect a Senator subsequent to an open primary in which all the candidates for the office participated and which resulted in the candidate and at least one other candidate qualifying for the ballot in the general election, shall be treated as a candidate of a major party for purposes of this title;

"(12) the term 'primary election' means any election which may result in the selection of a candidate for the ballot of the general election;

"(13) the term 'primary election period' means the period beginning on the day following the date of the last Senate election for the same Senate office and ending on the date of the first primary election for such office following such last Senate election for such office or the date on which the candidate withdraws from the election or otherwise ceases actively to seek election, whichever occurs first;

"(14) the term 'runoff election' means the election held after a primary election, and prescribed by applicable State law as the means for deciding which candidate(s) should be certified as nominee(s) for the Federal office sought;

"(15) the term 'runoff election period' means the period beginning on the day following the date of the last primary election for such office and ending on the date of the runoff election for such office;

"(16) the term 'Senate Fund' means the Senate Election Campaign Fund maintained by the Secretary of the Treasury in the Presidential Campaign Fund established by section 9006(a) of the Internal Revenue Code of 1986; and

"(17) the term 'voting age population' means the resident population, 18 years of age or older, as certified pursuant to section 315(e).

"ELIGIBILITY TO RECEIVE PAYMENTS

"SEC. 502. (a) To be eligible to receive payments under this title a candidate shall, within 7 days after qualifying for the general election ballot under the law of the State involved—

"(1) certify to the Commission under penalty of perjury that during the period beginning on January 1 of the calendar year preceding the year of the general election involved, or in the case of a special election for the office of United States Senator, during the period beginning on the day on which the vacancy occurs in that office, and ending on the date of such certification, such candidate and the authorized committees of such candidate have received contributions in an amount at least equal to 10 cents multiplied by the voting age population of such State or at least equal to $150,000, whichever is greater, up to an amount that is not more than $650,000;

"(2) certify to the Commission under penalty of perjury that all contributions received for purposes of paragraph (1) have come from individuals and that no contribution from such individual, when added to all contributions to or for the benefit of such candidate by such individual, was taken into account to the extent such amount exceeds $250;

"(3) certify to the Commission under penalty of perjury that such candidate and the authorized committees of such candidate have not expended and will not expend, for the primary election, more than the amount equal to 67 percent of the general election spending limit applicable to such candidate pursuant to section 310(b) or more than $1,750,000, whichever amount is less, unless such amount is increased pursuant to section 310(g);

"(4) certify to the Commission under penalty of perjury that such candidate has not expended and will not expend for runoff elections, if any, more than 39 percent of the maximum amount of the limitation applicable to such candidate as determined under section 310(b), unless such amount is increased pursuant to section 310(g);

"(5) certify to the Commission under penalty of perjury that 75 per centum of the aggregate amount of contributions received for purposes of paragraph (1) have come from individuals residing in such candidate's State;

"(6) certify to the Commission under penalty of perjury that at least one other candidate has qualified for the same general election ballot under the law of the State involved;

"(7) agree in writing that such candidate and the candidate's authorized committees—

"(A) have not made and will not make expenditures which exceed the limitations established in section 310, except as otherwise provided in this title;

"(B) will not accept any contributions in violation of section 315;

"(C) will not accept any contribution for the general election involved except to the extent that such contribution is necessary to defray expenditures for such election that in the aggregate do not exceed the difference between the amount of the limitation on expenditures established in section 310(b) and the amount of payments provided for in paragraph (1)(A) or (2)(A) of section 310(a), as the case may be;

"(D) will deposit all payments received under this section in a national or State bank in a separate checking account which shall contain only funds so received, and will make no expenditures of funds received under this section except by checks drawn on such account;

"(E) will furnish campaign records, evidence of contributions and other appropriate information to the Commission;

"(F) will cooperate in the case of any audit and examination by the Commission under section 307; and

"(G) will not use any broadcast station, as such term is used in section 315 of the Communications Act of 1934, for the television broadcasting of a political announcement or

advertisement during which reference is made to an opponent of such candidate unless such reference is made by such candidate personally and such candidate is identified or identifiable during at least 50 percent of the time of such announcement or advertisement, if such opponent has agreed to the requirements of this title or has received funds pursuant to the provisions of this title; and

"(8) apply to the Commission for a payment as provided for in section 504.

"(b) For the purposes of subsection (a)(1) and paragraph (2) of section 504(a), in determining the amount of contributions received by a candidate and the candidate's authorized committees—

"(1) no contribution other than a gift of money made by a written instrument which identifies the person making the contribution shall be taken into account;

"(2) no contribution made through an intermediary or conduit referred to in section 315(a)(8) shall be taken into account;

"(3) no contribution received from any person other than an individual shall be taken into account, and no contribution received from an individual shall be taken into account to the extent such contribution exceeds $250 when added to the total amount of all other contributions made by such individual to or for the benefit of such candidate beginning on the applicable date specified in paragraph (4) of this subsection; and

"(4) no contribution received prior to January 1 of the calendar year preceding the year in which the general election involved or received after the date on which the general election involved is held shall be taken into account, and in the case of a special election for the office of United States Senator no contribution received prior to the date on which the vacancy occurs in that office or received after the date on which the general election involved is held shall be taken into account.

"(c) The threshold amounts in subsection (a)(1) shall be increased at the beginning of each calendar year based on the increase in the price index as determined under section 315(c), except that for purposes of determining such increase, the term 'base period', as used in such section shall mean the calendar year of the first election after the date of enactment of the Senatorial Election Campaign Act of 1987.

"LIMITATIONS ON EXPENDITURES

"Sec. 503. (a) No candidate who receives a payment for use in a general election under this title shall make expenditures from the personal funds of such candidate, or the funds of any member of the immediate family of such candidate, aggregating in excess of $20,000, during the election cycle.

"(b) Except as otherwise provided in this Act, no candidate who receives a payment for use in a general election under this title shall make expenditures for such general election which in the aggregate exceed $400,000, plus—

"(1) in States having a voting age population of ¼ million or less, 30 cents multiplied by the voting age population; or

"(2) in States having a voting age population over 4 million, 30 cents multiplied by 4 million plus 25 cents multiplied by the voting age population over 4 million; except that the amount of the limitation under this subsection, in the case of any candidate, shall not be less than $950,000, nor more than $5,500,000.

"(c) The limitations on expenditures in subsections (b), (d), and (e) shall be subject to the provisions of subsections (b) and (c) of section 504.

"(d) No candidate who is otherwise eligible to receive payments for a general election under this title may receive any such payments if such candidate spends, for the primary election, more than the amount equal to 67 percent of the limitation on expenditures for the general election determined under subsection (b), or more than $2,750,000, whichever amount is less, except as provided in subsection (g).

"(e) No candidate who is otherwise eligible to receive payments for a general election under this title may receive any such payments if such candidate spends for a runoff election, if any, more than an amount which in the aggregate exceeds 20 percent of the maximum amount of the limitation applicable to such candidate as determined under subsection (b), except as provided in subsection (g).

"(f)(1) For purposes of this section, the amounts set forth in subsections (b), (d), and (e) of this section shall be increased at the beginning of each calendar year based on the increase in the price index as determined under section 315(c), except that for purposes of determining such increase the term 'base period', as used in section 315(c), means the calendar year of the first election after the date of enactment of the Senatorial Election Campaign Act of 1987.

(2) Notwithstanding the provisions of subsection (b), in any State with no more than one transmitter for a commercial Very High Frequency (VHF) television station licensed to operate in that State, no candidate in such State who receives a payment for use in a general election under this title shall make expenditures for such general election which in the aggregate exceed the higher of—

"(A) $950,000; or

"(B) $400,000 plus 45 cents multiplied by the voting age population up to a population of 4 million, plus 40 cents multiplied by the voting age population over 4 million, up to an amount not exceeding $5,500,000.

"(3) The limitation set forth in subsection (b) shall not apply to expenditures by a candidate or a candidate's authorized committees from a compliance fund established to defray the costs of legal and accounting services provided solely to insure compliance with this Act; provided however that—

"(A) the Fund contains only contributions (including contributions received in excess of any amount necessary to defray qualified campaign expenditures pursuant to section 313) received in accordance with the limitations, prohibitions, and reporting requirements of this Act;

"(B) the aggregate total of contributions to, and expenditures from, the Fund will not exceed 10 percent of the limitation on expenditures for the general election determined under subsection (b); and

"(C) no transfers may be made from the Fund to any other accounts of the candidate's authorized committees, except that the Fund may receive transfers from such other accounts at any time.

In the event that, subsequent to any general election, a candidate determines that the cost of necessary and continuing legal and accounting services requires contributions to and expenditures from the Fund in excess of the limitations of this paragraph, the candidate may petition the Commission for a waiver of such limitations up to any additional amounts as the Commission may authorize in connection with such waiver. Any waiver, or denial of a waiver, by the Commission under this paragraph shall be subject to judicial review under section 508. Any funds left when the candidate terminates or dissolves the fund, shall be—

"(i) contributed to the United States Treasury to reduce the budget deficit, or

"(ii) transferred to a fund of a subsequent campaign of that candidate.

"(g) If, during the two-year election cycle preceding the candidate's election, independent expenditures by any person or persons aggregating an amount in excess of $10,000 are made in opposition to a candidate or for the opponent of such candidate, the limitations provided in subsection (d) and subsection (e), as they apply to such candidate, shall be increased in an amount equal to the amount of such expenditures.

"(h) If the provisions of section 506(c) apply and such candidate does not receive his full entitlement, such candidate may accept aggregate contributions in an amount which, when added to the aggregate expenditures made by such candidate do not exceed the limitation on expenditures applicable to such candidate pursuant to section 503.

"ENTITLEMENT OF ELIGIBLE CANDIDATES TO PAYMENTS

"SEC. 504. (a) Except as otherwise provided in section 506(c)—

"(1) an eligible candidate who is a major party candidate shall be entitled to—

"(A) a payment under section 506 in an amount equal to the difference between the amount of the limitation for such candidate determined under section 503(b) and the amount required to be raised by such candidate to establish eligibility under section 502(a)(1); and

"(B) a payment under section 506 in an amount equal to the amount of the limitation determined under section 503(b) with regard to such candidate, if any candidate in the same general election not eligible to receive funds under this title either raises aggregate contributions or makes aggregate expenditures for such election which exceed the amount of the limitation determined under section 503(b) for such election; or

"(2) an eligible candidate who is not a major party candidate shall be entitled to—

"(A) matching payments under section 506 in an amount equal to the amount of each contribution received by such

candidate and such candidate's authorized committees, provided that in determining the amount of each such contribution—

"(i) the provisions of section 502(b) shall apply; and

"(ii) the contributions required by section 502(a)(1) shall not be eligible for matching payments under this title; and

the total amount of payments to which a candidate is entitled under this subsection shall not exceed 50 percent of the amount equal to the difference between the amount of the limitation for such candidate determined under section 503(b) and the amount required to be raised by such candidate to establish eligibility under section 502(a)(1); and

"(B) matching payments under section 506, equal to the amount of each contribution received by such candidate and the candidate's authorized committees if any candidate in the same general election not eligible to receive payments under this title raises aggregate contributions or makes aggregate expenditures for such election which exceed the amount of the limitation determined under section 503(b) for such election, provided that in determining the amount of each such contribution—

"(i) the provisions of section 502(b) shall apply; and

"(ii) contributions matched under subparagraph (A) of this paragraph or required to be raised under section 502(a)(1) shall not be eligible to be matched under this paragraph; and

the total amount of payments to which a candidate is entitled under this subsection shall not exceed 50 percent of the amount of the limitation determined under section 503(b) applicable to such candidate; and

"(3) all eligible candidates shall be entitled to—

"(A) the broadcast media rates provided under section 315(b) of the Communications Act of 1934; and

"(B) payments under section 506 equal to the aggregate total amount of independent expenditures made or obligated to be made, in the general election involved by any person in opposition to, or on behalf of an opponent of, such eligible candidate, as reported by such person or determined by the Commission under subsection (f) or (g) of section 304.

"(b) A candidate who receives payments under paragraph (1)(B), (2)(B), or (3)(B) of subsection (a) may spend such funds to defray expenditures in the general election without regard to the provisions of section 503(b).

"(c) A candidate who receives payments under this section may receive contributions and make expenditures for the general election without regard to the provisions of subparagraphs (A) and (C) of section 502(a)(7) or subsections (a) or (b) of section 503 if and when any candidate in the same general election not eligible to receive payments under this section either raises aggregate contributions or makes aggregate expenditures for such election which exceed twice the amount of the expenditure limit applicable to such candidate under section 503(b) for such election.

"(d) Payments received by a candidate under this section shall be used to defray expenditures incurred with respect to the general election period for such candidate. Such payments shall not be used (1) to make any payments, directly or indirectly, to such candidate or to any member of the immediate family of such candidate, (2) to make any expenditure other than expenditures to further the general election of such candidate, (3) to make any expenditures which constitute a violation of any law of the United States or of the State in which the expenditure is made, or (4) to repay any loan to any person except to the extent the proceeds of such loan were used to further the general election of such candidate.

"CERTIFICATION BY COMMISSION

"Sec. 505. (a) No later than 48 hours after an eligible candidate files a request with the Commission to receive payments under section 506 the Commission shall certify such eligibility to the Secretary of the Treasury for payment in full of the amount to which such candidate is entitled, unless the provisions of section 506(c) apply. The request referred to in the preceding sentence shall contain—

"(1) such information and be made in accordance with such procedures, as the Commission may provide by regulation; and

"(2) a verification signed by the candidate and the treasurer of the principal campaign committee of such candidate stating that the information furnished in support of the request, to the best of their knowledge, is correct and fully satisfies the requirements of this title.

"(b) Certifications by the Commission under subsection (a) and all determinations made by the Commission under this title, shall be final and conclusive, except to the extent that they are subject to examination and audit by the Commission under section 507 and judicial review under section 508.

"ESTABLISHMENT OF FUND; PAYMENTS TO ELIGIBLE CANDIDATES

"Sec. 506. (a) The Secretary shall maintain in the Presidential Election Campaign Fund (hereafter referred to as the 'Fund') established by section 9006(a) of the Internal Revenue Code of 1986, in addition to any other accounts maintained under such section, a separate account to be known as the 'Senate Fund'. The Secretary shall deposit into the Senate Fund, for use by candidates eligible to receive payments under this title, the amounts available after the Secretary determines that the amounts in the Fund necessary for payments under subtitle H of the Internal Revenue Code of 1986 are adequate. The monies designated for such account shall remain available without fiscal year limitation.

"(b) Pursuant to the priorities provided in paragraph (3) of subsection (c), upon receipt of a certification from the Commission under section 505, the Secretary shall promptly pay to the candidate involved in the certification, out of the Senate Fund, the amount certified by the Commission.

"(c)(1) If at the time of a certification by the Commission under section 505 for payment to an eligible candidate, the Secretary determines that the monies in the Senate Fund are not, or may not be,

sufficient to satisfy the full entitlement of all such eligible candidates, the Secretary shall withhold from such payment such amount as he determines to be necessary to assure that an eligible candidate will receive a pro rata share of such candidate's full entitlement. Amounts so withheld shall be paid when the Secretary determines that there are sufficient monies in the Senate Fund to pay such amounts, or portions thereof, to all eligible candidates from whom amounts have been withheld, but, if there are not sufficient monies in the Senate Fund to satisfy the full entitlement of an eligible candidate, the amounts so withheld shall be paid in such manner that each eligible candidate receives his or her pro rata share of his or her full entitlement. The Secretary shall notify the Commission and each eligible candidate by registered mail of the reduction in the amount to which that candidate is entitled under section 505.

(2) If the provisions of this subsection result in a reduction in the amount to which an eligible candidate is entitled under section 505 and payments have been made under this section in excess of the amount to which such candidate is entitled, such candidate is liable for repayment to the Fund of the excess under procedures the Commission shall prescribe by regulation.

"(3) If the provisions of this subsection apply and the monies in the fund are not sufficient to satisfy the full entitlement of all candidates, in addition to the procedures provided in paragraph (2), the Secretary shall give priority to general election payments and pay such payments, or portions thereof, before other payments made pursuant to this title.

"EXAMINATION AND AUDITS; REPAYMENTS

"SEC. 507. (a)(1) After each general election, the Commission shall conduct an examination and audit of the campaign account of 10 per centum of the eligible candidates of each major party and 10 per centum of all other eligible candidates, as designated by the Commission through the use of an appropriate statistical method of random selection to determine, among other things, whether such candidates have complied with the expenditure limits and other conditions of eligibility and requirements of this title.

"(2) After each special election, the Commission shall conduct an examination and audit of the campaign accounts of each eligible candidate in such election to determine whether such candidates have complied with the expenditure limits and other conditions of eligibility and requirements under this title.

"(3) The Commission may conduct an examination and audit of the campaign accounts of any eligible candidate in a general election if the Commission, by an affirmative vote of four members, determines that there exists reason to believe that such candidate has violated any provision of this title.

"(b) If the Commission determines that any portion of the payments made to a candidate under this title was in excess of the aggregate payments to which such candidate was entitled, the Commission shall so notify such candidate, and such candidate shall pay to the Secretary an amount equal to the excess.

"(c) If the Commission determines that any amount of any payment made to a candidate under this title was not used as provided

for in this title, the Commission shall so notify such candidate and such candidate shall pay to the Secretary an amount equal to 200 per centum of the amount of such funds.

"(d) If the Commission determines that any candidate who has received payments under this title has made expenditures which in the aggregate exceed by 5 per centum or less the limitation set forth in section 503(b), the Commission shall so notify such candidate and such candidate shall pay to the Secretary an amount equal to the amount of the excess expenditure.

"(e) If the Commission determines that any candidate who has received payments under this title has made expenditures which in the aggregate exceed by more than 5 per centum the limitation set forth in section 503(b), the Commission shall so notify such candidate and such candidate shall pay the Secretary an amount equal to three times the amount of the excess expenditure up to an amount not in excess of the payments received pursuant to section 504.

"(f) Any amount received by an eligible candidate under this title may be retained for a period not exceeding sixty days after the date of the general election for the liquidation of all obligations to pay general election campaign expenses incurred during this general election period. At the end of such sixty-day period any unexpended funds received under this title shall be promptly repaid to the Secretary.

"(g) No notification shall be made by the Commission under this section with respect to an election more than three years after the date of such election.

"(h) All payments received under this section shall be deposited in the Senate Fund.

"CRIMINAL PENALTIES

"SEC. 570A. (a) No candidate shall knowingly or willfully accept payments under this title in excess of the aggregate payments to which such candidate is entitled or knowingly or willfully use such payments for any purpose not provided for in this title or knowingly or willfully make expenditures from this personal funds, or the personal funds of his immediate family, in excess of the limitation provided in this title.

"(b) Any person who violates the provisions of subsection (a) shall be fined not more than $25,000, or imprisoned not more than 5 years, or both. Any officer or member of any political committee who knowingly consents to any expenditure in violation of the provisions of subsection (a) shall be fined not more than $25,000, or imprisoned not more than 5 years, or both.

"(c)(1) It is unlawful for any person who receives any payment under this title, or to whom any portion of any such payment is transferred, knowingly and willfully to use, or authorize the use of, such payment or such portion except as provided in section 504(d).

"(2) Any person who violates the provisions of paragraph (1) shall be fined not more than $10,000, or imprisoned not more than 5 years, or both.

"(d)(1) It is unlawful for any person knowingly and willfully—

"(A) to furnish any false, fictitious, or fraudulent evidence, books, or information (including any certification, verification,

notice, or report), to the Commission under this title, or to included in any evidence, books, or information so furnished any misrepresentation of a material fact, or to falsify or conceal any evidence, books, or information relevant to a certification by the Commission or an examination and audit by the Commission under this title, or

"(B) to fail to furnish to the Commission any records, books, or information requested by it for purposes of this title.

"(2) Any person who violates the provisions of paragraph (1) shall be fined not more than $10,000, or imprisoned not more than 5 years, or both.

"(e)(1) It is unlawful for any person knowingly and willfully to give or accept any kickback or any illegal payment in connection with any payments received by any candidate who receives payments under this title, or the authorized committees of such candidate.

"(2) Any person who violates the provisions of paragraph (1) shall be fined not more than $10,000, or imprisoned not more than 5 years, or both.

"(3) In addition to the penalty provided by paragraph (2), any person who accepts any kickback or illegal payment in connection with any payments received by any candidate pursuant to the provisions of this title, or received by the authorized committees of such candidate, shall pay to the Secretary for deposit in the Fund, an amount equal to 125 percent of the kickback or payment received.

"JUDICIAL REVIEW

"SEC. 508. (a) Any agency action by the Commission made under the provisions of this title shall be subject to review by the United States Court of Appeals for the District of Columbia Circuit upon petition filed in such court within thirty days after the agency action by the Commission for which review is sought. It shall be the duty of the Court of Appeals, ahead of all matters not filed under this title, to advance on the docket and expeditiously take action on all petitions filed pursuant to this title.

"(b) The provision of chapter 7 of title 5, United States Code, apply to judicial review of any agency action, as defined in section 551(13) of title 5, United States Code, by the Commission.

"PARTICIPATION BY COMMISSION IN JUDICIAL PROCEEDINGS

"SEC. 509. (a) The Commission is authorized to appear in and defend against any action instituted under this section and under section 508 either by attorneys employed in its office or by counsel whom it may appoint without regard to the provisions of title 5, United States Code, governing appointments in the competitive service, and whose compensation it may fix without regard to the provisions of chapter 51 and subchapter III of chapter 53 of such title.

"(b) The Commission is authorized through attorneys and counsel described in subsection (a), to institute actions in the district courts of the United States to seek recovery of any amounts determined under section 507 to be payable to the Secretary.

"(c) The Commission is authorized, through attorneys and counsel described in subsection (a), to petition the courts of the United

States for such injunctive relief as is appropriate in order to implement any provision of this title.

"(d) The Commission is authorized on behalf of the United States to appeal from, and to petition the Supreme Court for certiorari to review, judgments or decrees entered with respect to actions in which it appears, pursuant to the authority provided in this section.

"REPORTS TO CONGRESS; REGULATIONS

"SEC. 510. (a) The Commission shall, as soon as practicable after each election, submit a full report to the Senate setting forth—

"(1) the expenditures (shown in such detail as the Commission determines appropriate) made by each eligible candidate and the authorized committees of such candidate;

"(2) the amounts certified by the Commission under section 505 for payment to each eligible candidate;

"(3) the amount of repayments, if any, required under section 507, and the reasons for each payment required; and

"(4) the balance in the Presidential Election Campaign Fund, and the balance in the Senate Fund and any other account maintained in the Fund.

Each report submitted pursuant to this section shall be printed as a Senate document.

"(b) The Commission is authorized to prescribe such rules and regulations in accordance with the provisions of subsection (c), to conduct such examinations and investigations, and to require the keeping and submission of such books, records, and information, as it deems necessary to carry out the functions and duties imposed on it by this title.

"(c) Thirty days before prescribing any rules or regulation under subsection (b), the Commission shall transmit to the Senate a statement setting forth the proposed rule or regulation and containing a detailed explanation and justification of such rule or regulation.

"AUTHORIZATION OF APPROPRIATIONS

"SEC. 511. There are authorized to be appropriated to the Commission for the purpose of carrying out functions under this title, such sums as may be necessary.".

TITLE 26, UNITED STATES CODE, INTERNAL REVENUE CODE

CHAPTER 61—INFORMATION AND RETURNS

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§ 6096. Designation by individuals

(a) IN GENERAL.—Every individual (other than a nonresident alien) whose income tax liability for the taxable year is **[**$1**]** *$2* or more may designate that **[**$1**]** *$2* shall be paid over to the Presidential Election Campaign Fund in accordance with the provisions of section 9006(a). In the case of a joint return of husband and wife

having an income tax liability of [$2] *$4* or more, each spouse may designate that [$1] *$2* shall be paid to the fund.

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TITLE 47, UNITED STATES CODE, COMMUNICATIONS ACT OF 1934

CHAPTER 5—WIRE OR RADIO COMMUNICATION

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§ 315. Candidates for public office

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(b) BROADCAST MEDIA RATES.—The charges made for the use of any broadcasting station by any person who is a legally qualified candidate for any public office in connection with his campaign for nomination for election, or election to such office shall not exceed—

(1) during the forty-five days preceding the date of a primary or primary runoff election and during the sixty days preceding the date of a general or special election in which such person is a candidate, the lowest unit charge of the station for the same class and amount of time for the same period [;]*: Provided, That in the case of candidates for United States Senator in a general election, as such term is defined in section 501(8) of the Federal Election Campaign Act of 1971, this provision shall apply only if such candidate has been certified by the Federal Election Commission as eligible to receive payments under title V of such Act;* and

(2) at any other time, the charges made for comparable use of such station by other users thereof.

* * * * * * *

MINORITY VIEWS OF MESSRS. STEVENS, HATFIELD, WARNER, DOLE, AND GARN

The "Senatorial Election Campaign Act of 1987", as reported by the Committee on Rules and Administration to the Senate on April 29, 1987, raises troubling public policy questions and would, if enacted, adversely alter the very nature of the American political system. We are opposed to the bill as reported and urge the Senate to consider favorably the substitute for S. 2 we shall present on the Floor.

Aware of our obligation to present alternatives to those legislative measures which we oppose, our substitute to S. 2 is a long needed, comprehensive revision of Federal election law. It addresses many of the issues raised by those who support the bill as reported, without resorting to ill-conceived solutions such as "public financing" of Senate campaigns.

We urge those Senators who have practical and philosophical differences with the approach adopted in S. 2 to consider our proposal. It represents a reasoned and realistic approach to campaign fund raising and election law "reform".

As reported, S. 2 is the wrong solution to the wrong problem offered at the wrong time. It was intended to address what its proponents see as the twin problems of our contemporary system of campaign finance: the role of political action committees and the amount of time which is required by Members of Congress to raise the funds which are necessary to effectively carry on a campaign for election. While many Senators would agree that the time needed for fund raising could be used for more pressing Senate duties, we do not accept the argument that requiring the American Taxpayer to subsidize a candidate's campaign treasury is the solution. In developing arbitrary dollar limits on the amounts which candidates can spend to inform the electorate on the issues, and by requiring that the Treasury of the United States become the source of last resort for Senate elections, we believe that the proponents of S. 2 have, in addition, failed to achieve the one goal in which we all believe—that more citizen involvement in campaigns, not less, is the strength of the American democratic experience.

"Public financing" of Senate elections is the panacea offered by the proponents of S. 2 to the oft-stated twin issues of the role of PACs and the amount of money which is spent in Congressional campaigns. Whatever, "public financing" means as a concept, it can have only one meaning in reality and that is that the taxpayers of the United States will be required to pay for Senate election contests whether or not they have any interest whatsoever in a particular candidate or issue. As reported, S. 2 will allow the American taxpayer the ability to "check off" $2.00 from his or her tax obligation and redirect those tax dollars from the general revenues of the Treasury into a new government account which will at-

tempt to fund all of the Senate election contests conducted each two year cycle.

This tax "check off" scheme is modeled after the somewhat similar Presidential "check off" system which has been a feature of the tax code for over a decade. Proponents of S. 2 will argue that because there has always been sufficient money in the Presidential check off fund each Presidential cycle, there will also be enough money in the Senate fund to adequately underwrite the cost of the Senate elections each cycle. What the proponents fail to understand is that only 23 percent of all taxpayers choose to "check off" for the Presidential fund and that the Presidential fund has a four-year time period over which to accumulate funds for disbursement in the fourth year. The Senate fund will operate with only one-half as much time to accumulate the necessary resources for the thirty-three or thirty-four Senate races which are conducted every two years. With the "check off" being raised from $1.00 to $2.00 in S. 2, there is no assurance that even as many as the 23 percent of taxpayers who now choose to redirect $1.00 of their tax obligation will continue to do so in the future. In addition, two other considerations must be addressed when deciding whether to adopt the $2.00 check off as proposed in S. 2, i.e. is the $2.00 check off revenue neutral with respect to the Federal budget and its deficit and will the $2.00 adequately fund Senate campaigns, as envisioned by S. 2 or, for that matter, all Congressional campaigns, as will ultimately occur?

The $2.00 check off is not revenue neutral and it will adversely affect the Federal budget process and deficit reduction plans. No matter how the proponents of S. 2 define the way in which the tax check off should work, the reality is that the funds checked off for allocation to a Senate campaign fund will, by definition, be redirected away from current obligation. Because the $50 to $100 million which will be required for the Senate fund (at least $250 to $350 million should the program be extended to House of Representative elections) will be reallocated from existing Federal programs, the Congress will be required to find new funding for this reallocation of resources. The proponents' solution to that problem is a tax increase.

Will the $2.00 check off be adequate to fund the biennial Senate election campaigns? The answer is clearly in the negative and the proponents of S. 2 understand this and address the problem in the bill. At a minimum, the Federal Election Commission believes that $50 to $100 million will be required each two years to implement S. 2 as it is written. However, because S. 2 also provides additional funding for candidates whose opponents exceed the state's spending limits and additional funding for any candidate who is subject of an independent expenditure effort, there is absolutely no way in which the funding requirements for S. 2 can ever be predicted with any degree of certainty. The proponents of S. 2 accept this problem and provide for "pro-rata" distributions from the Senate fund if the Secretary of the Treasury concludes that there will be insufficient funding available to meet the requirements of S. 2. Informed election law experts told our Committee that after the first cycle of "public financing", there will never be adequate funding available, that all distributions will be "pro-rata", and that no funds will ever

be made available to counter those candidates who breach their expenditure limitations or those groups which launch independent expenditure efforts.

Additionally, the proponents of S. 2 argue that "public financing" will all but eliminate "special interest" money in campaigns and will greatly reduce the influence of the PAC community. In reality, all money contributed in all elections comes from individuals who have an interest in the outcome of that particular election. There is nothing wrong with such an expression of self-interest. As James Madison said in Federalist No. 10, narrow special interests bring their arguments to policy makers, those policy makers reach judgments about the merits of those arguments and positions, and the resultant synthesis of all the disparate, narrow special interests is the development of broad-based public policy.

S. 2 will neither eliminate the presence of special interest contributions nor will it reduce the role of political action committees. By placing a "receipts cap" on the amount of PAC contributions a candidate can accept, the proponents of S. 2 have given birth to two resultant problems: (1) a "race" by the largest, most well-funded political action committees to get to a particular candidate early enough in the election cycle so as to be able to make a contribution before the candidate's PAC contribution limitation takes effect; and (2) a redirection of PAC money away from individual contributions toward "independent expenditures" for and against candidates, over which no candidate will exercise control. The result will be further negativism in campaigns—and further voter apathy.

Proponents of the bill propose to reduce the costs of campaigning and the time required by fund raising by instituting "expenditure limitations" for each of the states. Under this scenario, a candidate who participates in the "public financing" of his campaign agrees to spend no more than the limit set for his or her state. In order to insure that candidates would have an incentive to participate, the spending limits must bear some relationship to the actual costs of conducting campaigns in a given state. As set forth in S. 2, the spending limit for a small state would be $950,000 and the limit for a large state would be $5,500,000.

How do these spending limits compare with the 1986 election experience? In North Dakota, where the spending limit for the primary and general elections (including a "compliance fund" of $95,000 as authorized by S. 2) would equal $1.68 million for each of the two major party candidates in the general election (a total of $3,363,000 for the two candidates), the total spent in the 1986 cycle by former Senator Andrews and Senator Conrad was $3,145,486. Therefore, to "reduce the costs" of North Dakota Senate elections, the taxpayers will be required to expend $3,363,000, a figure which in reality is $217,514 more than the candidates managed to spend using conventional methods.

What will be the experience in large states with such expenditure limits? In California, the spending limit will equal $8.8 million ($5.5 million for the general election, $2.75 million for the primary election, and a $550,000 compliance fund), a total of $17,600,000 for the two major party candidates. During the 1986 election cycle, Senator Cranston spent about $11,000,000 and former Congressman

Zachos spent about $11.1 million for a total of about $22.2 million. Therefore, to "reduce the costs of campaigning" for election to the Senate from California by $5.75 million, the taxpayers will be required to expend $17.6 million. We are of the view that the amounts of money required to be expended by taxpayers does not justify these speculative reductions in campaign costs.

Additionally, it must be remembered that S. 3 provides that the "expenditure limit" will be lifted whenever an opponent of a candidate breaches the spending limit and whenever an "independent expenditure" effort is mounted against a candidate. Because there is no way of calculating such hypothetical expenditures before an election, there is, in reality, no way of calculating, in advance, the amount of money which might be spent in a given state by election day.

For these reasons, we do not support S. 3 as reported.

With respect to the elements of S. 3 which provide for additional funding to a participating candidate whose opponent breaches the state spending limit and the implementation of a cap upon the amount of total contributions which a participating candidate may accept from all political action committees, the Department of Justice has expressed serious doubts on the Constitutionality of such provisions. The opinion of the Department is as follows:

U.S. DEPARTMENT OF JUSTICE,
OFFICE OF LEGISLATIVE AND INTERGOVERNMENTAL AFFAIRS,
Washington, DC, May 4, 1987

Hon. WENDELL H. FORD,
Chairman, Committee on Rules and Administration, U.S. Senate, Washington, DC

DEAR MR. CHAIRMAN: This letter expresses the views of the Department of Justice on S. 3, S. 10, S. 172, and S. 207, bills to amend the Federal Election Campaign Act of 1971 to provide for public financing of Senate general election campaigns, and for other purposes. These bills provide for public financing of senatorial elections, largely tracking the language and structure of the Presidential Election Campaign Fund Act, Pub. L. No. 93-179, 93 Stat. 1305 (1971) codified as amended at 26 U.S.C. 9001-9013. The Department believes that these bills violate the First Amendment, and accordingly, opposes their enactment.

[illegible]

All four bills provide for federal grants to candidates from major parties in general elections to the United States Senate. They also would impose expenditure limitations on those candidates who choose to participate in the public funding program. Although participation in the public funding program and adherence to the expenditure limitations would be voluntary, the bills impose some form of monetary sanction on those candidates who choose not to participate and who raise and expend sums in excess of the limitation applicable to participating candidates.

In the case of S. 10 and S. 172, each candidate would be required to notify the Federal Election Commission in writing of his intention to accept or not to accept public funds. If a major party candidate elects not to accept such funds, his opponent "shall receive an

ditional funds in the amount of one dollar for every dollar of contributions or expenditures raised, incurred, or expended by the candidate not accepting funding. . . . Such additional funds shall only match those contributions or expenditures raised, incurred, or expended by the candidate not accepting funding which are in excess of the entitlement of such eligible candidate." S. 50, § 504; S. 179, § 504. S. 2 would provide that a major party candidate is eligible for additional funds "if any candidate in the same general election not eligible to receive funds under this title either raises aggregate contributions or makes aggregate expenditures for such election which exceed the [statutory limits]," and matching payments within specified limits in the case of a candidate who is not a major party candidate. S. 2, § 504(5)(6). Finally, S. 207 would provide that an eligible candidate who receives public funding "based, in part, on the fact that an opposing candidate in such election did not agree to abide by the limitations on expenditures, shall have such limitation increased pursuant to this Act." S. 207, § 506.

These provisions pose grave constitutional problems. Their obvious intent is to discourage candidates from opting out of the public financing system, even if they believe that they can thereby raise more funds through their own resources and contributions. In the process, they place what seems to us to be undue burdens on the rights of individual candidates to expend their funds on their campaigns and on the rights of contributors.

Direct limitations on a candidate's right to expend his personal resources on his own political campaign plainly violate the First Amendment. See *Buckley* v. *Valeo*, 424 U.S. 1, 50–54 (1976). The only rationale thus far accepted by the Supreme Court for regulation of campaign financing and expenditures—"preventing corruption or the appearance of corruption," see *FEC* v. *National Conservative Political Action Committee*, 470 U.S. 480, 496–497 (1985)—does not in any way support, and indeed affirmatively undercuts, the validity of restrictions on a candidate's personal expenditures. See 424 U.S. at 53. These bills seek to impose such restrictions indirectly, by placing what amounts to a penalty on a candidate's personal expenditures in excess of his hypothetical entitlement to public funds. This penalty amounts to a matching grant of public funds to his opponent. Personal expenditures by a candidate thus serve to trigger the subsidization of views with which the candidate presumably does not agree. While this type of indirect restriction does not fall within the precise holding of *Buckley*, we believe it is clearly embraced by its reasoning.[1]

Statutes or regulations compelling an individual to support viewpoints which he opposes have been subject to successful constitutional challenge in a number of contexts. In *Miami Herald Publishing Co.* v. *Tornillo*, 418 U.S. 241 (1974), the Court found unconstitutional Florida's "right of reply" statute, affording political candidates whose character or record is attacked by newspaper columns a right to have their replies printed by the offending newspaper. The Court held that government can no more tell newspapers

[1] The Framers of the Constitution explicitly limited the power of the federal government to regulate the political process. See Cooper, *The First Amendment, Original Intent, and the Political Process*, 10 Harv. J.L. & Pub. P. 15 (1987).

what they must publish than what they are forbidden to publish. See 418 U.S. at 256. The Florida statute, the Court held, "exacts a penalty on the basis of the content of a newspaper." Ibid. By expressing a particular viewpoint, the newspaper is forced to subsidize views with which it disagrees. See also *Pacific Gas & Electric Co.* v. *Public Utilities Comm'n of California*, 106 S.Ct. 903, 908 (1986) (plurality opinion) ("PG & E") (which commented on *Tornillo* saying "by forcing the newspaper to disseminate opponents' views, the statute penalized the newspaper's own expression"). The provisions of these bills are analogous. Congress plainly cannot forbid candidates from expending resources on their campaigns. Rather than directly doing so, the bills "exact[ ] a penalty," 418 U.S. at 256, for such conduct, by making the size of the public subsidy to the candidate's opponent dependent upon the candidate's own First Amendment conduct. The more the candidate does to promote his own views, the more he fosters the promotion of views he opposes.[2]

Subsequent cases similarly affirm the individual's right to decline to support causes not of his own choosing. In *Abood* v. *Detroit Board of Education*, 431 U.S. 209 (1977), the Court determined that compelling non-union public employees to pay union dues violated their First Amendment rights when those dues were used to advance political causes with which the forced contributors disagreed. Citing *Buckley* for the proposition that the right to contribute is constitutionally protected, see 431 U.S. at 234, the Court reasoned that "[t]he fact that the appellants are compelled to make, rather than prohibited from making, contributions for political purposes worked no less an infringement of their constitututional rights." Ibid. (footnote omitted). The Constitution, the Court continued, "prohibit[s] . . . requiring any of the appellants to contribute to the support of an ideological cause he may oppose as a condition of holding a job as a public school teacher." Id. at 235. The Constitution would similarly prohibit conditioning the exercise of the right to expend resources on a political campaign on the candidate's direct support of his opponent. We are unwilling to conclude that the same is not true of a requirement that the candidate indirectly support his opponent's views by increasing the public funds available to him.

These principles were reaffirmed in *PG & E*, *supra*, which held that requiring public utilities to include materials published by ratepayer groups in their mailings to customers violated the First Amendment. The plurality opinion found that such compelled access "penalizes the expression of particular points of view and forces speakers to alter their speech to conform with an agenda they do not set." *PG & E*, 106 S.Ct. at 908 (plurality opinion). The Court gave significance to the fact that the "appellant must contend with the fact that whatever it speaks out on a given issue, it

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[2] The bills are obviously different from the statute denying tax-empt status to contributions to organizations engaged in lobbying that was upheld in *Regan* v. *Taxation With Representation of Washington*, 461 U.S. 540 (1983). The holding in that case was that Congress does not abridge First Amendment rights by declining to subsidize them. See 461 U.S. at 545-546. A challenge to section 504, however, would not be based on Congress' failure to subsidize candidates who expend their own funds, but rather on Congress' decision to increase the funds available to some candidates based on the First Amendment activities of others. Cf. *Federal Election Comm'n* v. *Mass. Citizens for Life*, ___ U.S. ___, 107 S.Ct. 616, 627 n.9 (1986) (plurality opinion).

may be forced—at [the ratepayer group's] discretion—to help disseminate hostile views." Id. at 910. Similarly, under these bills, candidates who spend their own funds in greater than the prescribed amounts are "forced to help disseminate hostile views." To be sure, the situations are not precisely the same. The Court in *PG & E* specifically distinguished the case before it from content-neutral subsidies, which it had previously upheld against First Amendment challenge, because the California utility commission's order "forces the speaker's opponent—*not the taxpaying public*—to assist in disseminating the speaker's message." Id. at 911 (emphasis added). Thus, one could argue that only a requirement that a candidate personally finance his opponent would run afoul of the First Amendment. But again, we think that requiring the candidate to "assist" in the financing of his opponents views by making his expenditures the trigger for an increased public subsidy more closely resembles the prohibited regulation in *PG & E* than a permissible subsidy.

In sum, we think that the proposed provisions, by trying a candidate's funding of his own campaign to increased public funding of his opponent's likely represents an unconstitutional infringement on the right to use one's own resources to disseminate political messages.

RIGHTS OF CONTRIBUTORS

For many of the reasons outlined above, the bills may also unconstitutionally burden the rights of contributors. Under the bills, contributions to candidates in excess of the statutorily specified amounts result in the payment of additional public funds to their opponent. Thus, contributors see their contributions fostering the spread not only of the ideas they wish to support, but also of those they do not. The predictable result is a chilling effect on the right to contribute. While the Court in *Buckley* upheld reasonable restrictions on the amount that individuals and groups can contribute to candidates, id. at 23–29, such limitations implicate protected First Amendment interests id. at 22–23, and were subjected by the *Buckley* Court to a "rigorous standard of review." Id. at 29. They passed constitutional muster because of "the weighty interests served by restricting the size of financial contributions to political candidates." Ibid. These interests are not served to the same degree, if indeed they are served to all, by "counterbalancing" small contributions above a statutory maximum with public funds. Accordingly, it is doubtful whether the Court would reach the same result with respect to these bills' effect on contributors as it did with the provisions in *Buckley*.[3]

Because the direct effect of the provisions is to increase the funds at the disposal of candidates, the provisions do not obviously fail a

[3] Moreover, the bills might present problems under the equal protection component of the Fifth Amendment's Due Process Clause. Contributors to candidates who eschew public funds but do not exceed their entitlement have their contribution serve entirely the cause they favor. By contrast, contributors to candidates who exceed their hypothetical public funding limits see their contributions in effect do double duty, increasing the ability of both their candidate and his opponent to spread their messages. Because it is unlikely, however, that a candidate will refuse to accept public funds unless he is confident of raising more than the amount available under the bills, this possibility is a remote one.

First Amendment test as did, for example, the flat limitation on campaign expenditures struck down in *Buckley*. See 424 U.S. at 54–58. Thus, it can be argued that the bill permissibly serves the purpose of equalizing the voices of candidates by raising the volume of all rather than stifling the voices of some. Cf. id. at 48–49. ("the concept that government may *restrict* the speech of some elements of our society in order to enhance the relative voice of others is wholly foreign to the First Amendment") (emphasis added). But in reality the bills may well restrict speech, at least if candidates are effectively compelled to accept public funding in lieu of the greater absolute amounts they could obtian in its absence.[4] Furthermore, equalizing the amount of money available to candidates is at best a crude, and at worst a perverse, means of equalizing voices, particularly when one of those voices is a incumbent or has greater name recognition that can only be overcome through greater expenditures. Finally, and most significantly, we doubt whether an equalizing measure that has as its trigger protected speech of a particular character (such as qualified campaign expenses) is safe from constitutional infirmity even if it is thought that, in some vague, unspecifiable sense, it thereby increases the "total amount" of speech. See *PG & E*, 106 S.Ct. at 914 (plurality opinion).[5]

Accordingly, all of these bills raise serious constitutional questions with respect to the rights of contributors. Since they are not even designed, much less narrowly tailored, to prevent corruption, they appear to us to be inconsistent with the First Amendment.

PAC CONTRIBUTIONS

S. 2 and S. 50 also propose a number of amendments to sections 301, 315, and 318 of the Federal Election Campaign Act of 1971, 2 U.S.C. 431, 441a, 441d ("Election Act"). Both of these bills would reduce the present $5,000 limit on contributions by multicandidate political action committees ("PACs") to $3,000.[6]

More substantively, S. 2 would prohibit PACs from contributing to a candidate if that candidate has already received contributions from other PACs in specified amounts (essentially $125,000 for con-

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[4] Some candidates, of course, will in all likelihood decline public funding and seek to spend at the higher level that would prevail in the absence of the statute even if it means adding to the public resources at the disposal of their opponents. Candidates who suffer from lack of name recognition, for example, may have no practical choice but to seek higher funding levels.

[5] The Fairness Doctrine, 47 C.F.R. 73.1910, and the Personal Attack Rule, at 73.1920, which require broadcast licensees to air a representative cross-section of viewpoints as a result of the expression of other viewpoints, are in some ways similar to these bills. The constitutionality of these rules was upheld against a First Amendment challenge in *Red Lion Broadcasting Co.* v. *FCC*, 395 U.S. 367 (1969). The Court in *Red Lion*, however, made clear that its holding was based on the peculiar circumstances of the broadcasting industry, which requires its own particularized First Amendment inquiry. See 395 U.S. at 389, 389–390. Moreover, subsequent case law questions the continuing validity of *Red Lion* in light of the technological expansion of broadcast opportunities. See *FCC* v. *League of Women Voters*, 468 U.S. 364 n.12 (1984).

[6] S. 50 would also raise the limit on individual contributions in section 315(a)(1)(A) of the Election Act from $1,000 to $2,000. The Department approves of this increase, which is a long overdue, if only partial, recognition of the effects of inflation since the law was enacted. We would be prepared to see a much higher limit, or even the total repeal of contribution limitations.

Both S. 2 and S. 50 propose an extensive definition of the phrase "cooperation or consultation with any candidate," as it is used in the Election Act's definition of an "independent expenditure." See 2 U.S.C. 301(17). We are opposed to the provision that retention of the same provider of "professional services" as the candidate constitutes "cooperation or consultation" with that candidate. The term "professional services" is not defined by the bills, and we are unaware of any definition—of for that matter, any use—of the term elsewhere in the Election Act. We are thus concerned about its vagueness and potential for confusion.

gressional candidates, and between $200,000 and $750,000 for senatorial candidates, depending on the size of the state). Reasonable limits on campaign contributions by individuals and PACs were upheld against a First Amendment challenge in *Buckley*, 424 U.S. at 23–38, and the proposed amendment to the dollar amounts that PACs can give to candidates raised no new constitutional problems. See id. at 30, As a matter of policy, however, we are deeply concerned about the provision that would limit total PAC contributions to candidates. In some circumstances, the effect of these provisions could well be entirely to deny PACs the opportunity to contribute to their favored candidates if other groups have been diligent or fortunate enough to have their checks arrive first. For example, if 50 PACs each contribute $2,500 to a congressional campaign, the 51st PAC would be entirely barred from making a contribution. The bill thus raises the very real possibility—indeed the likelihood—of a total ban on contributions by some groups, in essence, a contribution limit of $0. This goes far beyond the regulations upheld in *Buckley*. The *Buckley* Court made clear that the limitations it was upholding were reasonable and had only a "limited effect upon First Amendment freedoms." 424 U.S. at 29. In rejecting a challenge to the $1,000 individual contribution limit as too low, the Court noted that "[s]uch distinctions in degree become significant only when they can be said to amount to *differences in kind*." Id. at 30 (emphasis added). A restriction that can amount to a total ban on contributions by certain groups is surely "differen[t] in kind" from a dollar limit of $5,000 or $3,000.

Nor are the government's interests in this regulation as strong as its interests in the kind of restrictions upheld in *Buckley*. As previously stated, the Court has recently emphasized that "preventing corruption or the appearance of corruption are the only legitimate and compelling government interests thus far identified for restricting campaign finances. "*FEC* v. *National Conservative Political Action Committee*, 470 U.S. at 496–497. These interests are served much more directly by restricting the amount of contributions coming from a single source or a few sources than by limiting the number of (relatively small) contributors donating to a given campaign. Indeed, one would think that a limitation on the number of contributors (which is what the proposed amendment amounts to) would be entirely *antagonistic* to the goal of preventing corruption or its appearance. The receipt of small contributions from many sources—a prerequisite, one should note, for receiving matching federal funds in presidential primaries, see 26 U.S.C. 9033(b)(3)—would seem to indicate that the candidate is beholden to no one interest group in particular, and indeed has broad support among the electorate. Given the relatively weak connection between S. 2 and the goals approved as permissible in *NCPAC*, and the substantial restrictions the bill would impose on the exercise of First Amendment freedoms, we think that the bill's limitation on total PAC contributions is unconstitutional.

CRIMINAL PENALTIES

Two of the bills, S. 50 and S. 179, contain specific criminal penalties for violations (section 508). These penalties are similar in both

bills: Any person who "knowingly and willfully" violates the expenditure limitations imposed on candidates "voluntarily" participating in public funding programs can be fined not more than $5,000 and/or imprisoned for not more than one year. The "knowing and willful" misuse of public funds by Senate candidates participating in public financing programs can result in fines of up to $10,000 and/or imprisonment for up to five years. "The knowing and willful" submission of fraudulent documentation to the Federal Election Commission for the purpose of supporting claims for matching funds is likewise subject to fines of up to $10,000 and/or imprisonment for up to five years. The giving or acceptance of "illegal payments" or "kickbacks" in connection with the making of qualified compaign expenses from federal funds is subject to fines of up to $10,000 and/or imprisonment for up to five years. Finally, both bills contain an anti-leak provision that imposes misdemeanor penalties of one year imprisonment and/or $5,000 fines for any person who discloses information obtained under the provisions of these bills "except as may be required by law."

Both of the existing public funding programs for presidential candidates have specific criminal felony penalties for fraud offenses. See 26 U.S.C. 9012, 9042. Candidates for President who participate in the public funding programs described above are also subject to expenditure limitations imposed under the Federal Election Campaign Act ("FECA"), 2 U.S.C. 441a(b). Violations of those expenditure limitations are subject to the administrative, civil, and criminal enforcement sanctions applicable to all violations of the FECA. See 2 U.S.C. 437g.

The penalties for presidential candidates and their campaigns who have chosen to participate in the existing public funding programs are treated as though they were campaign financing offenses, which we believe them to be. Specifically, these limitations on expenditures are codified in the FECA at 2 U.S.C. 441a(b), and violations of them are subject to the same enforcement machinery as pertains to other violations of the FECA's substantive provisions. We believe that this format should apply to the new Senatorial public funding programs embraced by the bills at issue here, rather than providing special criminal (but no non-criminal) sanctions for violations such as is done in S. 50 and S. 179. We also believe that those bills which do not have criminal penalties, S. 2 and S. 207, should include them.[7]

For all of these reasons, the Department of Justice strongly opposes S. 2, S. 50, S. 179, and S. 207.

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[7] The anti-kickback provision which S. 50 and S. 179 incorporate is new to campaign financing legislation. We feel that it is a good idea, and we recommend that the substance of this provision be made applicable to the two existing public financing programs for presidential candidates. The anti-leak provision in S. 50 and S. 179 is confusing, in that it does not identify the data to which it pertains. The existing FECA contains an anti-leak provision, which should be adequate to address whatever confidentiality concerns might have prompted this provision. See e.g., 2 U.S.C. 437g(a)(4)(B) and 437g(a)(12).

The Office of Management and Budget has advised this Department that there is no objection to the submission of this report from the standpoint of the Administration's program.

Sincerely,

JOHN R. BOLTON,
Assistant Attorney General.

The substitute to the bill, as reported, we introduce will address the following issues: the distinction in current law between individuals and political action committees with respect to the amounts which each is allowed to contribute to a candidate for election to the Senate; and need for greater disclosure of the expenditure of "soft money" by political parties and organizations; the desirability for more disclosure to the public and to other candidates in an election of "independent expenditures" which are made for or against a particular candidate and which are intended to directly influence the outcome of that election; a Constitutionally-sound method of discouraging negative political advertising; and the implementation of an effective method to close the "millionaire's loophole", which was created by the Supreme Court in the case of *Buckley* v. *Valeo*.

Under the Federal Election Campaign Act, as amended, individuals may contribute up to $1,000 in a primary and an additional $1,000 in a general election to a candidate for election to Congress. This limitation was set in 1974 and has never been raised, despite the erosion caused by iflation over the intervening thirteen years. Political action committees, on the other hand, have been allowed to contribute up to $5,000 per election to a Congressional candidate. This figure was also set in 1974 and has never been altered.

We propose that these specific limits be amended with the individual limit being raised from $1,000 to $1,500 per election and the PAC limit being lowered from $5,000 to $2,500 per election. Changing the mix of contribution limits will result in Congressional candidates becoming more inclined to rely on individuals and less inclined to rely on PACs to fund their campaigns. We believe that altering the contribution mix so as to increase the value of an individual's contribution and decrease the value of a political action committee contribution will cause candidates for Congress to return to the historic source of their funding and will curtail, to some degree, the influence of political action committees. Reorienting Congressional campaigns back to individual contributors is a goal shared by all Senators.

During the Committee's consideration of S. 2, many witnesses suggested that the issue of so called "soft money" expenditures should be addressed in any reform proposal. Our alternative would squarely address that point and would require new reporting requirements for any corporation, political action committee, labor organization, or political party committee which engages in a "soft money" expenditure, where the intent was to influence a Federal election. Such "soft money" expenditures would include, but not be limited to, voter registration drives and "get out the vote" efforts. We wish to make it clear that the substitute would not outlaw such efforts but would merely disclose such efforts and provide the public with factual information concerning the scale of the effort,

its cost, and the sponsorship of the undertaking—information which is not disclosed under current Federal election law.

In testimony before the Committee, many witnesses made the point that "soft money" expenditures had grown rapidly in size and sophistication over the years and that the public was unable to ascertain the kind of basic information about such efforts which can be gleaned from the contribution and expenditure reports that must now be filed by candidates and campaign committees.

"Soft money" expenditures cut across both party and ideological lines and "soft money" disclosure, as proposed in our substitute, is a non-partisan attempt at providing the public with more information about the heretofore undisclosed area of political activity.

Our substitute also addresses one new area within the general issue of "soft money" disclosure: the quasi-political activities on nonprofit, often tax-exempt organizations. It has come to our attention that in recent election contests some nonprofit and possibly tax-exempt organizations have engaged in direct mail efforts whose clear intention was to affect the outcome of a Federal election. While tax-exempt organizations may not engage in any partisan, political activity without the threat of losing their tax-exempt status under the Internal Revenue Code, there is evidence that some of these groups have engaged in direct mail fund raising efforts which clearly took partisan, political stands on public issues and the positions of Federal candidates on these issues. These organizations utilize a Congressionally-sanctioned postal subsidy to mail such information and fund solicitations to voters. Thus, we believe that an organization which wishes to engage in such direct mail efforts within the 90 days immediately prior to a biennial general election may do so, but without the subsidized mail rates which are provided by the taxpayers of the United States. Our substitute would not prohibit such mailings, but would remove the group's subsidized postal rate during a period immediately prior to a general election, a time when a strong presumption lies that such solicitations are intended to influence the Federal election which they comment upon in the mailing.

Two of the most troubling issues in contemporary campaign practice have been the growth of "independent expenditures" and "negative" campaign advertisements. The concept of "independent expenditures" was given viability by the Supreme Court in the case of *Buckley* v. *Valeo*. In that decision, the Court held that expenditures which were made independently of a candidate could not be restricted or prohibited because of overriding First Amendment considerations. As a result, a growing percentage of campaign advertisements have become "independent" of a particular candidate while supporting or criticizing that candidate or an opponent.

Our suggestion would not prohibit or restrict such independent efforts. It would, however, require new, more informed public disclosure of the identity of the group or individual which sponsors and pays for the "independent expenditure". The public has a right to know about the sources of funds and sponsorship of such expenditures and our proposal provides that information. In addition, we would require that sponsors of "independent expenditures" provide notice to the candidates in an election that such an expenditure was being made and we would require that the text of the "inde-

pendent expenditure" advertisement be provided to all candidates. We would propose that once $10,000 had been expended on such an effort, the Federal Election Commission be notified of that fact and that such notice be again given whenever an additional $5,000 was spent on such an effort (and in increments of $5,000 thereafter). We also redefine the term "independent expenditure" to make it consistent with recent court decisions and to insure that any such efforts were both nominally and actually "independent" of a candidate.

In addition, the substitute would provide language to codify an opinion of the Federal Election Commission relative to the disclosure of all "contributions" which are made to any candidate draft committee, where such committee advocates that a clearly identified individual because a candidate for election to a Federal office. This provision is aimed at the current lack of disclosure of contributions which are made to Presidential draft committees. It would affect Congressional candidates as well in the rare instance where a Congressional candidate began an election contest with the creation of a draft committee.

Another of the loopholes which resulted from the *Buckley* v. *Valeo* decision was the ability of an independently wealthy candidate to fund his or her own campaign without regard to the contribution limits which must be observed by that candidate's opponents. There is a basic inequity in the instance where a candidate with independent wealth is able to spend or loan as much of his own money as he deems prudent to his campaign committee, while his opponents must abide by the individual and political action committee contribution limits set forth in the Federal Election Campaign Act. To address this inequity, we would provide that if a wealthy candidate proposes to spend or loan $250,000 or more of his own money to his committee, the other candidates in the election would have their statutorily-mandated individual contribution limit raised from $1,500 to $10,000 per election, with the aggregate annual individual contribution level being raised as well. The result would be that such an election would be held on a more level playing field than is presently the case.

The final substantive area addressed by the substitute is the issue of the "bundling" of campaign contributions, by intermediaries, before presentation to a particular candidate. We have become aware that while "bundling" of contributions is not prohibited by the Federal Election Campaign Act or interpretations of the Federal Election Commission, one area of potential abuse does exist—that "bundling" of checks whose payee line has been left blank. We are agreed that if such a practice occurs, it should be eliminated altogether. The proposed substitute would bar such activity and would provide that all "bundling" campaign contribution checks must be made payable to an identified candidate or campaign committee.

The hearings which were conducted by the Committee during consideration of S. 2 illustrated that there is a substantial body of informed opinion which argues that a comprehensive overhaul of Federal campaign law is in order. The proponents of S. 2 have one view of that process. We have a somewhat different view. In the

end, both views are in agreement that the time has come for a substantive review of the present state of Federal elections.

While individuals of good will might differ over the exact nature of any set of amendments to the Act, there is general agreement that the time is right for a review of the entire process. In that regard, we suggest that before the Senate undertakes consideration of such amendments in a piecemeal fashion, a bi-partisan commission on campaign finance issues be impaneled to report back to the Senate by a date certain on the scope of the problem and with proposed solutions.

The Federal Election Campaign Act, though written in 1974, has already been subject to three major sets of amendments in the brief period of its existence as a statute. These three sets of earlier amendments, and those now under consideration, prove conclusively that whenever the Congress begins a hasty revision of the Act, the new "solutions" give rise to equally new "problems" in a surprisingly short period of time. That fact has led to a description of the Act as "the law of unintended consequences." Rather than repeating the mistakes of the past, we suggest that a dispassionate and bi-partisan group of election law experts be given the mandate to thoroughly study this complex issue and to provide the Congress with a comprehensive set of proposals which will meet the test of time and which will not lead to the creation of a new set of even more troubling campaign finance issues.

During the Committee's consideration of the issue of campaign finance reform and this particular bill, one central requirement for a legislative solution became abundantly clear—the necessity for a reasoned and open debate on S. 2 and its alternatives. Legislative solutions which are intended to fundamentally alter the way in which American elections have been funded and carried on for the past two hundred years must be debated in public, defended openly when questioned, and must result in a broad-based consensus that the solution does not do violence to the very fabric of American democracy.

The substitute which we will offer when this measure is brought to the Floor for debate is a consensus of views and as such could not include all of the many worthy proposals for amendments to the Federal Election Campaign Act which were brought to our attention. When the substitute is introduced, we invite Senators to bring forward their amendments and to debate the issue fully.

For two hundred years of our history as a nation, the Senate of the United States, in open session, has served as the "crucible of ideas" for the course of the American democratic experiment. Just as has occurred so many times in the past, the Senate should again, with the American public as a witness, determine the direction of campaign finance reform. Such an historic undertaking cannot be agreed to in a limited debate. It cannot be adopted by a caucus decision. It must be debated and voted on before the people of America by the Senate in the true tradition of the Senate.

ADDITIONAL VIEWS OF MR. HELMS

When I visit with friends back home, I often mention that when Congress starts to "reform" something, they'd better hang on to their wallets. S. 2 is no exception.

I have always believed our political system was based on the philosophy of voluntary participation, full disclosure, and political accountability. Yet the proposal to impose public financing of Senate compaigns upon the American taxpayer is antithetical to that philosophy.

Thomas Jefferson, who is a personal hero of mine, said, "To compel a man to furnish contributions for the propagation of opinions which he disbelieves is sinful and tyrannical." I fully agree. How can we justify compelling citizens to contribute, through their tax dollars, to candidates whom they may not support—indeed, may not even know?

In addition, if we trust the American public to hold elected officials accountable for their actions in office, the last thing we should do is restrict the freedom or resources that candidates can use to communicate to the public about their opponents. How else can the public hold elected officials accountable unless challengers are free to reveal and discuss the deficiences of incumbents—and vice versa?

If we restrict the freedom of a challenger to expose to the public the inadequacies in an incumbent's record of service—if we restrict the ability of a candidate to communicate to the public, either by controlling the context of that communication, or by limiting the resources available, then we will do a grave disservice to the American public's right to be informed, and we will make mockery of the concept of political accountability.

Furthermore, we have no business establishing complex formulas to dictate how much is appropriate for candidates to spend in seeking public office. The American people are competent to judge that for themselves.

Our responsibility, as I see it, is to assist the public in becoming as well-informed as possible before they cast their vote. We can best accomplish this by requiring full disclosure by all candidates and by promoting extensive debate on issues, and thorough discussion of each candidate's qualifications and performance.

In this regard, if the public believes that so-called "negative advertising" is undesirable or unwise, they are free to let that be known through their vote. I would observe that an honest definition of "negative advertising" generally turns out to be an epithet used by candidates and the news media to denigrate a candidate whom they oppose.

I commend the distinguished Senator from Alaska (Mr. Stevens) for his efforts on this issues. He has worked hard to develop an alternative proposal that takes some important steps towards true

election law reform. However, as I've said many times in the past, if we are serious about reforming our federal election laws, we must address the most blatant violations of political freedom: the use of compulsory union dues for political purposes.

The Supreme Court has clearly stated that nonunion employees have a constitutional right to prevent unions from spending compulsory dues "to express political views unrelated to its duties as exclusive bargaining representative." The Court has also made it clear that "[t]he amount at stake for each individual dissenter does not diminish this concern. For, whatever the amount, the quality of respondents' interest in not being compelled to subsidize the propagation of political or ideological views that they oppose is clear." [*Chicago Teachers Union* v. *Hudson* (1985)].

Despite that clear enunciation of constitutional rights, our federal labor laws, in conjunction with our federal election laws, continue to give organized labor a power enjoyed by no other private association—the power to take money from American workers as a condition of getting a job or keeping a job, and use that money for political causes and candidates whom the workers themselves may not support.

The Federal Election Campaign Act, as amended in 1976, has only the appearance of restricting the use of compulsory union dues for political purposes. While the law does prohibit the use of compulsory dues for direct cash contributions to political candidates, it does not—I say again: does not—prohibit the use of forced union dues for a number of indirect means of supporting political candidates and causes.

Section 441b of the Federal Election Campaign Act specifically states that it is unlawful for a corporation or labor organization to make a "contribution or expenditure" in connection with any federal primary general election. It does allow corporations and labor unions to set up separate political action committees, which can make direct contributions and expenditures for political purposes.

Section 441b(b)(3) prohibits a PAC from using compulsory union dues to make "contributions or expenditures." However, the definition of "contribution or expenditure." specifically excludes a number of valuable political activities, such as communications by the union to its members and their families, get-out-the-vote campaigns, and the establishment, administration, and solicitation of contributions to the PAC. Consequently, the statute allows unions to use compulsory union dues for partisan political activities in direct contravention to the holding of the Supreme Court.

Because of this legal dichotomy, union officials divide their political expenditures into two categories: hard money and soft money. Hard money consists of money given directly to candidates in the form of cash or in-kind contributions taken from funds given voluntarily by union membrs. Soft money is that enormous amount of money spent by union officials on behalf of—but not contributed directly to—political candidates.

This so-called soft money finances the operations of union PACs; it provides extensive in-kind political services; and, in fact, it represents the overwhelming bulk of union political expenditures. This is money coming directly from union dues that workers must pay as a condition of employment.

This soft money can run well into the millions of dollars each election cycle. For example, in July 1976, AFL-CIO public relations director, Bernard Albert, revealed that the annual budget of the AFL-CIO's Committee on Public Education alone ran to approximately $2 million.

In spite of the vast sums of compulsory union dues that finance the operating costs of union PAC's, the bulk of compulsory dues soft money goes for unreported, unlimited in-kind political expenditures. The July 1979 issue of Steelabor, the official newspaper of the United Steelworkers of America, offered its readers a surprisingly candid and straightforward explanation of in-kind political spending. "Union Dues money," reported the union paper, "can't go for direct political contributions—but it can do a lot, mailings supporting or opposing political candidates, phone banks, precinct visits, voter registration, and get-out-the-vote drives."

In spite of these admissions, the account in Steelabor only tells half of the story. To fill out the picture, several key expenditures need to be added to the list: thousands of union employees devoted almost solely to partisan political activities; election day workers paid overtime rates from compulsory dues; millions of political pamphlets and flyers; and paid election-day carpools and babysitters, and many others.

Mr. Paul Jennen, Walter Mondale's campaign liaison to organized labor, estimated that the unions' soft money contributions to Mr. Mondale's campaign was worth about $20 million. This is money that is neither documented nor reported to the Federal Election Commission. This overwhelming amount of political expenditure remains hidden from the American public.

In light of the Supreme Court's unequivocal holding that no compulsory union dues can be used for political purposes, there is absolutely no justification for the Federal Election Campaign Act to continue to make this distinction between direct and indirect political expenditures. That is why I introduced S. 415, which would amend the Federal Election Campaign Act to prohibit the use of compulsory union dues for any political expenditures, direct or indirect.

Opponents of my proposal will claim that the use of compulsory union dues for politics is analogous to the use of corporate funds to establish political action committees with which stockholders may disagree. They say my legislation would unfairly tip the political balance of power in favor of business interests by restricting only union politics.

First, we must keep in mind that the balance of power is already skewed by the National Labor Relations Act, which gives unions a power enjoyed by no other organization: the power to collect dues from American workers as a condition of their employment.

Second, this bill is not designed to deny labor organizations, or anyone else, the right to participate freely in the political process. It is designed, and is necessary, to protect the constitutional right of dissenting union members not to have their forced dues used for political purposes. The U.S. Court of Appeals for the District of Columbia, in *Federal Election Commission v. International Association of Machinists*, specifically rejected the analogy between dissenting union members and corporate shareholders.

In that case, attorneys for the International Association of Machinists union charged that 11 corporations had violated the Federal Election Campaign Act by soliciting contributions to their political action committees from administrative personnel under what they termed "inherently coercive" conditions. The district court ruled that no such violation had occurred.

Union attorneys asked the U.S. Court of Appeals to decide whether the use of general corporate assets to establish and support corporate political action committees violates the first amendment rights of dissenting shareholders. Union attorneys attempted to base their claim on the landmark case *Abood v. Detroit Board of Education*, in which the Supreme Court held that the First Amendment prohibits unions from having employees to support political causes against their will through the use of compulsory union dues. Union attorneys attempted to draw a parallel between the situation in *Abood* and the use of treasury funds by corporations to establish and administer PAC's.

The Court of Appeals was not convinced. The Court ruled that there was no valid analogy between the union position in *Abood v. International Association of Machinists* and the fact situation in *Abood*. The Court pointed out that a corporate shareholder is under no compulsion to support a political cause against his will. Citing another Supreme Court decision, *First National Bank of Boston v. Bellotti*, the Court of Appeals said "the shareholder remains in a corporation of his own volition and is free to withdraw his investment at any time and for any reason."

Any campaign reform effort must deal with the abusive use of compulsory union dues. The time has come to ensure to individual workers the right to choose for themselves which political causes dollars and no one's dollars will be used to support.